

1           have shown to you any type of check that you  
2           had signed?

3       A     I believe he showed it to me, yes, sir.

4       Q     And that was a check drawn on the Sunshine  
5           Camping account for which you wrote to another  
6           business in Enterprise, correct?

7       A     Yes, sir.

8       Q     And that was -- the name of that business was  
9           what?

10      A     Southeastern Lawbreakers, I believe.

11      Q     And you did not have authority to do that, did  
12           you?

13      A     No, sir.

14      Q     And did you consider that in your mind a  
15           forgery?

16      A     Yes, sir.

17      Q     And is that the reason that you believed you  
18           were being asked to leave and being discharged?

19      A     Yes, sir.

20      Q     At that very moment when you left do you agree  
21           with me that there was no fact or circumstance  
22           nor indication, to your knowledge, that Comber  
23           Borland knew about these fraudulent loans that  
24           you had sent to Union Planters?

25      A     No, sir.

1 Q In fact, until after you left, until you were  
2 discharged and the police started investigating  
3 this matter, Comber Borland and Sunshine  
4 Camping knew nothing about it?

5 A Yes, sir.

6 Q Now, you know and understand, do you not, sir,  
7 that when you are an employee that you are  
8 employed to do things that are recognized  
9 acceptable, appropriate for the person you're  
10 hired for, correct?

11 A Yes, sir.

12 Q And at the time you signed these documents that  
13 we've introduced into evidence and you put your  
14 name on those documents, you knew you were  
15 going against what you were hired to do,  
16 correct?

17 A Yes, sir.

18 Q As a matter of fact, you were asked a bunch of  
19 questions while you looked at a document that  
20 was put up here on an overhead projector,  
21 didn't you?

22 A Yes, sir.

23 Q However, they didn't bring the projector down  
24 there to you for you to sign it, did they?

25 A No, sir.

1 Q And they didn't come down there and point it  
2 out to you or say this is what you're doing and  
3 this is what it's supposed to be and this is  
4 the effect of it; none of that happened, did  
5 it?

6 A No, sir.

7 Q In fact, it wasn't anything close to what you  
8 went through in this courtroom, is it?

9 A No, sir.

10 Q But you knew at the time you signed that  
11 document, that document that I'm making  
12 reference to, I'm not trying to confuse you. I  
13 want to start over and make certain that I have  
14 not confused you, okay?

15 A Yes, sir.

16 Q It's in and you've looked at it. I think it's  
17 document Plaintiff's Exhibit 1. It's called a  
18 dealer agreement?

19 A Yes, sir.

20 Q Yes? And you said you signed that because you  
21 were the president, were you not, at Sunshine  
22 Camping at that time?

23 A Yes, sir.

24 Q Okay. But even though you were the president  
25 at that time you knew and understood that you

1           wasn't signing a document that Sunshine was  
2           gonna be paying Union Planters back for you  
3           having a theft scheme; you knew that, didn't  
4           you?

5       A     Yes, sir.

6       Q     You didn't even have to be told that. You had  
7           enough intelligence and knowledge to know that,  
8           didn't you?

9       A     Yes, sir.

10      Q     And don't you know and understand that when the  
11           documents are sent up to Paducah, Kentucky,  
12           that they have the opportunity to check into  
13           these applications and see if, in fact, the  
14           recreational equipment existed, the people  
15           existed, et cetera?

16      A     I don't understand that question.

17      Q     You don't know what they do up there in  
18           Paducah, Kentucky?

19      A     Never been there.

20      Q     Never asked them?

21      A     No, sir.

22      Q     You didn't -- well, you put on several of  
23           those: See bureau. You remember writing that  
24           on there?

25      A     If the -- yeah, I've wrote it on there before.

1 Q Yeah.

2 A If a customer told me something that was on  
3 their credit, I put: See bureau.

4 Q Right. Well, why didn't you write it on there  
5 like they told you to instead of saying: See  
6 bureau? They told you to fill it out  
7 completely, didn't they?

8 A They wanted a complete credit application.

9 Q But those aren't complete when you say: See  
10 bureau. You're supposed to identify what the  
11 problem is if there is a problem, aren't you?

12 A Yes, sir.

13 Q And you didn't identify what the problem was  
14 because you would have been caught, right?

15 A Yes, sir.

16 Q But if you had been doing what you were hired  
17 to do, what you were authorized to do, what was  
18 in the scope of your employment and  
19 relationship with Sunshine by telling the  
20 truth, you'd have been caught out, wouldn't  
21 you?

22 MR. SMITH: Your Honor, we object to  
23 that as it calls for a legal conclusion.

24 THE COURT: I overrule.

25 MR. SHIRLEY: That isn't --

1 THE COURT: I overrule.

2 BY MR. SHIRLEY:

3 Q Answer, sir.

4 A Repeat the question, please. I'm sorry.

5 Q You gonna make me repeat that? No, I think I  
6 can repeat it. You knew that if you had been  
7 doing your job, if you had been telling the  
8 truth, if you had been working like you were  
9 hired to do within the scope of your employment  
10 and within the authority that you had hired --  
11 been hired to do, you would have been caught  
12 out and these loans wouldn't have been  
13 approved; you knew that, didn't you?

14 A Yes, sir.

15 Q And it is correct for me to believe, sir, that  
16 up to this very moment, this very moment, you  
17 have never told a soul that Comber Borland knew  
18 anything about what you were doing?

19 A No, sir.

20 Q Had you ever -- forgive me, I'm trying not to  
21 get into something that I'm not supposed to.  
22 Earlier in your testimony you said Sunshine  
23 Camping company was a young company. You  
24 remember saying that?

25 A Yes, sir.

1 Q And so when I suggest to someone and tell  
2 someone that Union Planters was dealing with a  
3 new dealer, that would be correct, wouldn't it?

4 A Yes, sir.

5 Q And your experience that you had with Union  
6 Planters before you ever showed up with  
7 Sunshine Camping Company, that was -- you were  
8 backed up with a big organization, wasn't you?

9 A Yes, sir.

10 Q Sir?

11 A Yes, sir.

12 Q Emerald Coast? Yes, sir?

13 A Yes, sir.

14 Q Waylon Jones?

15 A Yes, sir.

16 Q Just you and Comber in this case, right?

17 A Yes, sir.

18 Q And y'all had not been in business for five  
19 years, had you?

20 A No, sir.

21 Q Now, if, in fact -- you remember that Exhibit  
22 J, you remember it had those dates and those  
23 times. Jon Williams, where is our title; Jon  
24 Williams, where is our document that says we  
25 have a security interest in this piece of

1 camping equipment -- you know what I'm talking  
2 about, don't you?

3 A Yes, sir.

4 Q Had you told them the truth you would have been  
5 discovered right then, wouldn't you?

6 A Yes, sir.

7 Q But you didn't, did you?

8 A No, sir.

9 Q And they never checked with anybody else, did  
10 they?

11 A Not that I'm aware of.

12 Q And you made up numbers and names of that  
13 equipment, right?

14 A Yes, sir.

15 Q You must have thought they were a real easy  
16 target, did you?

17 A No, sir.

18 Q You didn't? You mean they're supposed to know  
19 that? Huh?

20 A Don't know, sir.

21 Q Yeah, I think they ought to know that.

22 MR. SMITH: Judge, now, wait, we  
23 object. We object.

24 THE COURT: I sustain.

25 MR. SMITH: That's improper. He



1 knows that.

2 THE COURT: I'll order the jury to  
3 disregard Mr. Shirley's comments.

4 BY MR. SHIRLEY:

5 Q And all of this money that this lawsuit is over  
6 is money that you started the scheme on,  
7 correct?

8 A Yes, sir.

9 Q And you pursued the scheme all alone? Yes,  
10 sir?

11 A Yes, sir.

12 Q You did it outside your purpose for being  
13 employed, outside of your scope of employment,  
14 and knowing you were not employed to be doing  
15 that, yes?

16 MR. SMITH: Your Honor --

17 THE COURT: Hold your answer.

18 MR. SMITH: Objection, calls for  
19 legal conclusion.

20 MR. SHIRLEY: Doesn't.

21 THE COURT: I overrule the objection.

22 A Yes, sir.

23 Q And you got the money solely for personal  
24 reasons, didn't you?

25 A Yes, sir.

1 Q Does Hubert Lawson have a kinship to you?

2 A Brother-in-law.

3 Q Is he still your brother-in-law today?

4 A Yes, sir.

5 Q You've never told your brother-in-law that  
6 Comber Borland knew anything about this, have  
7 you?

8 A No, sir.

9 Q And have you told your brother-in-law that you  
10 took all the money and used it for your own  
11 purposes?

12 A I think we have had that conversation, yes,  
13 sir.

14 Q Okay. And so Ms. Peters, Dorothy Peters, how  
15 is she related to you?

16 A Mother-in-law.

17 Q Before I leave Mr. Lawson, you didn't give  
18 Mr. Lawson any of the money?

19 A No, sir.

20 Q And you didn't give any of the money to  
21 Sunshine Camping; you took the money and did  
22 what with it?

23 A On what particular deal?

24 Q On the Lawson deal.

25 A I'm not sure the amount on the second one that

1           came back to me.

2       Q     You're not sure about what?

3       A     Whatever check went into Sunshine Camping  
4           Center, I don't know how much of that I got  
5           back.

6       Q     Okay. You got it back because you were holding  
7           the checkbook and doing the checkbook and  
8           managing it and got it.

9       A     No, sir.

10      Q     Weren't? Okay. But you got the money for your  
11           purposes, did you not?

12      A     Yes, sir.

13      Q     Okay. And that purpose was what on Lawson?

14      A     I had a gambling problem among other things.

15      Q     And that's certainly not in the scope of your  
16           employment to gamble, is it?

17      A     No, sir.

18      Q     There's never been a day that you showed up at  
19           Sunshine Camping that gambling was permitted,  
20           was it?

21      A     No, sir.

22      Q     And you're not trying to tell this Court and  
23           jury that Comber Borland knew you had a  
24           gambling problem, are you?

25      A     I'm not sure he knew I had a problem.

1 Q That says to me you can't testify under oath  
2 that he knows of something.

3 A Yes, sir.

4 Q And if he gets up here and says under oath that  
5 he didn't know it, you can't refute it, can  
6 you?

7 A No, sir.

8 Q Now, McAllister, you remember how much  
9 McAllister's was?

10 A I think it was 19,000.

11 Q Almost 20,000 with a finders fee? All of that  
12 went to gambling again?

13 A I'm not 100 percent sure but one of the two.

14 Q Either gambling or personal debts or  
15 obligations or something of that nature?

16 A Yes, sir.

17 Q Totally unrelated to Sunshine Camping? Yes?

18 A Yes, sir.

19 Q Now, you knew Comber was easy pickin's, didn't  
20 you?

21 A No, sir.

22 Q Well, you didn't put a single penny into  
23 Sunshine Camping company as an investment, did  
24 you?

25 A No, sir.

1 Q He put all the money in there, didn't he?

2 A Yes, sir.

3 Q So you would agree with me that what you've  
4 done is stolen from him, haven't you?

5 A No, sir.

6 Q You wouldn't? You hadn't stolen his  
7 reputation, stolen his name, stolen from the  
8 business? You don't consider that stealing  
9 from the business?

10 A Yes, sir.

11 Q Okay. I do, too.

12 MR. SMITH: We object and move to  
13 strike that last comment, Your Honor.

14 THE COURT: I sustain and order it be  
15 stricken.

16 MR. SMITH: Could you ask Mr. Shirley  
17 to refrain from making improper comments,  
18 Your Honor, he continues to do it.

19 THE COURT: So instructed.

20 BY MR. SHIRLEY:

21 Q If I understand, by your testimony you are  
22 agreeing with me that when this business  
23 started, that Comber furnished the financing  
24 for the business.

25 A Yes, sir.

1 Q And the responsibility would be that Comber  
2 would do the parts, the setup, the sort of the  
3 manual stuff, try to sell, but you were the one  
4 that had the knowledge and information about  
5 financing?

6 A Yes, sir.

7 Q And when you signed these notes that this  
8 lawsuit's about, you knew that he was not  
9 informed as a coworker at Sunshine about the  
10 policies or the procedures with Union Planters  
11 like you; you knew that, didn't you?

12 A Yes, sir.

13 Q You got notice and advice and were told when  
14 these loans were sent in when to expect the  
15 money, weren't you?

16 A Yes, sir.

17 Q And you could then manipulate the money and use  
18 the money and keep the money from coming in and  
19 being known from him as coming in without him  
20 knowing it, wouldn't you?

21 A All about except when it went to direct  
22 deposit.

23 Q Now, direct deposit. So that means that the  
24 only one that involved direct deposit was what?

25 A Dorothy Peters.

1 Q Right. And Dorothy Peters was in July, was it  
2 not?

3 A Yes, sir.

4 Q July 2003, right? Yes?

5 A Yes, sir.

6 Q Now, prior to that time did you know that there  
7 was a document that said the wire transfers  
8 were supposed to go to Commercial Banking in  
9 Ozark? Did you know that?

10 A I don't recall.

11 Q Okay. Well, you're not saying that's not  
12 correct, are you?

13 A No, sir.

14 Q Do you agree with me from what you know about  
15 the operation of the business from your  
16 dealings with the business that at the time you  
17 entered into a relationship with Union Planters  
18 that the money was supposed to be deposited by  
19 check to CB&T?

20 A I don't understand the question.

21 Q Okay.

22 A They funded by check sent to you by Fed-Ex and  
23 then it went to direct deposit.

24 Q Okay. And let me make certain that I'm being  
25 clear about what I'm understanding. What I

1 not CB&T under this agreement, doesn't it?

2 A Yes, sir.

3 Q Yes, sir. Now, what did you do, call them up  
4 and tell them to send it to CB&T?

5 A No, sir.

6 Q You didn't?

7 A No, sir.

8 Q Well, how did it get to CB&T?

9 A I think they had on record to CB&T. I don't  
10 know why they had to change it.

11 Q They had a CB&T checking account to send a  
12 check to, to be payable to that, but they  
13 didn't have any authorization for CB&T, did  
14 they?

15 A Right here they do.

16 Q They don't for wire transfers, do they?

17 A Yes, sir.

18 Q So they can do this with a automatic agreement  
19 transfer?

20 A If my memory recalls we set it up with CB&T.

21 Q Okay.

22 A And they funded that deal. For whatever reason  
23 they still had this one. They sent it here --

24 Q Okay.

25 A -- instead of here.



1 Q That does explain it. But what I'm asking you,  
2 sir, is had they sent wire transfers to CB&T to  
3 your knowledge before Dorothy Peters?

4 A I think that was the first one.

5 Q I think it was, too, because we've seen checks  
6 on McAllister and Lawson, Hubert Lawson.

7 A Yes, sir.

8 Q Both of his, haven't we?

9 A Yes, sir.

10 Q So there really wasn't any reason for -- I  
11 guess you didn't know it was wire transferred  
12 the day you went to the bank in July. You  
13 didn't know it was wire transferred?

14 A I think they sent us a notice once they do wire  
15 it.

16 Q Sent it to you, right?

17 A I remember seeing it, yes, sir.

18 Q Yeah. But you can't tell this Court that  
19 Comber Borland ever saw it, can you?

20 A I'm not sure if he did or not.

21 Q Right. Then that means you can't testify under  
22 oath that you do know it, right?

23 A Yes, sir.

24 Q And if Mr. Borland says that he never saw it,  
25 you cannot refute that, can you?

1 A No, sir.

2 Q As a matter of fact, if you had shown it to  
3 him, the cat would have been out of the bag,  
4 wouldn't it, because he didn't know anything  
5 about Dorothy Peters's, did he?

6 A He knew it was in the bank.

7 Q He knew there was money in the bank, did he  
8 not?

9 A Yes, sir.

10 Q Isn't it correct, Mr. Williams, that you told  
11 him that your mother had given you some money  
12 to put in the bank?

13 A I forget exactly what I told him.

14 Q You forget something that important?

15 A I forget my words exactly.

16 Q Yes, sir. You forget \$45,000 being in the  
17 bank? Didn't you tell him that your mother  
18 gave you that money and she wanted it back  
19 because she wasn't gonna keep paying you to  
20 stay at Sunshine?

21 A No, sir.

22 Q You didn't say that?

23 A No, sir.

24 Q Well, if Mr. Borland says that's what you told  
25 him, I guess you're saying he's untruthful?

1 A I didn't say that.

2 Q Okay. That's what I want to be sure of because  
3 he says you told him that, okay?

4 A I'm sorry, I didn't.

5 Q I ask you to assume that he said that. What  
6 did you do with the money you got out of  
7 Dorothy Peters?

8 A Same thing as the other.

9 Q Gambling, right? Gambling?

10 A Yes, sir.

11 Q Well, he didn't know anything about the  
12 gambling, did he?

13 A He knew I gambled.

14 Q He didn't know you were in trouble with the  
15 gamblers, did he? No, sir. And you knew --

16 MR. SMITH: Wait, Your Honor.

17 THE COURT: Yeah, he needs to be  
18 allowed to answer his question.

19 MR. SHIRLEY: I'm sorry, he shook his  
20 head.

21 MR. SMITH: I don't believe he did.

22 BY MR. SHIRLEY:

23 Q Didn't you -- he didn't know you were in  
24 trouble with the gamblers, did he?

25 A Not that I'm aware of.

1 Q All right. In fact, your story was I'm in  
2 trouble with debts; I can't pay my debts.  
3 That's your story, isn't it? Yes, sir?  
4 A Yes, sir.  
5 Q Okay. Now, you owed him \$15,000, didn't you?  
6 A Yes, sir.  
7 Q Because he bought you a truck?  
8 A No, sir.  
9 Q You didn't have a truck that you used at  
10 Sunshine Camping?  
11 A It wasn't mine, it was the company's.  
12 Q Oh, so it was a truck debt, that \$15,000?  
13 A No, sir.  
14 Q Well, you're gonna say if he says it was to go  
15 to that truck, he's just not being honest?  
16 A It wasn't a truck debt, no, sir.  
17 Q Okay. Well, where did the truck come from?  
18 A We bought it when we first started.  
19 Q With what, you didn't have any money?  
20 A The company bought it.  
21 Q Okay. But it was titled in your name?  
22 A No, sir.  
23 Q Whose?  
24 A Sunshine Camping Center, I think.  
25 Q Okay. Then you don't know.

1 MR. SMITH: Wait, Judge. I believe  
2 he said it was titled in the name of  
3 Sunshine Camping Center.

4 MR. SHIRLEY: He said I think.

5 BY MR. SHIRLEY:

6 Q If you think, is that something you know, sir?

7 THE COURT: I overrule.

8 BY MR. SHIRLEY:

9 Q Is that something, you know?

10 A I'm not sure.

11 Q Okay. You're not sure. Can we rest on that,  
12 you're not sure?

13 A Yes, sir.

14 Q Okay. Well, it is fair for me to believe, is  
15 it not, sir, that when you were down there at  
16 the bank, CB&T, Dorothy Peters's name didn't  
17 come up?

18 A No, sir.

19 Q No, sir, it didn't; no, sir, it did. You agree  
20 it didn't come up?

21 A No, sir. No, it didn't.

22 Q Okay. So it wasn't mentioned that that money,  
23 because you knew he knew Dorothy Peters hadn't  
24 bought no camper. You knew that, didn't you?

25 A Yes, sir.

1 Q And you would have been caught if you had told  
2 the truth about what that money came from and  
3 what it was trying to be used for, wouldn't it?

4 A Yes, sir.

5 Q And he wouldn't have let you do that, would he?

6 A No, sir.

7 Q I apologize if I've asked this but I want to be  
8 for certain about something. I know you've  
9 told me you did not put any money in the  
10 business, right?

11 A Yes, sir.

12 Q And I'm trying to ask this question because one  
13 day in the history of our lives you withdrew as  
14 the president?

15 A Yes, sir.

16 Q Okay. And that was sometime in August of '02?

17 A I believe, yes, sir.

18 Q And the reason was that Sunshine didn't have  
19 money to operate. And Comber told you that if  
20 he got financing from some of his family, you  
21 were going to have to give up your control in  
22 the business?

23 A Yes, sir.

24 Q And you did that?

25 A Yes, sir.

1 Q And you told him you didn't have any money to  
2 put in the business, didn't you?

3 A Yes, sir.

4 Q Because you didn't, did you?

5 A No, sir.

6 Q And then it comes along over in the spring of  
7 the next year and y'all need money, don't you?

8 A Yes, sir.

9 Q And then you give up your shares, don't you?

10 A Yes, sir.

11 Q Because again you didn't have any money?

12 A No, sir.

13 Q And the reason you didn't have any money is  
14 because you were gambling and people were after  
15 you?

16 A Yes, sir.

17 Q Do you have any reason to believe you're gonna  
18 be criminally prosecuted by Regions in this  
19 matter?

20 MR. MATTHEWS: Your Honor, I'm gonna  
21 object. That's an improper question and  
22 he knows it.

23 MR. SHIRLEY: It's not an improper  
24 question. It shows interest, motive,  
25 bias, whether or not he will be truthful.

1 THE COURT: I overrule.

2 A Question again, please.

3 Q Do you have any reason to believe that you're  
4 gonna be criminally prosecuted for this \$90,000  
5 that you fraudulently received by falsely  
6 completing those forms?

7 A I don't know, sir. I don't know.

8 Q You don't know?

9 A I don't know their intentions, no.

10 Q Do you think you should be?

11 A I've done wrong, and I'm willing to pay back.  
12 I made a mistake.

13 Q You wouldn't be surprised that I would agree  
14 with that, would you?

15 A No, sir.

16 Q It would be fair for me to believe that what  
17 has happened is that Comber Borland stuck his  
18 neck out to try to build a business for you and  
19 him, and you stabbed him in the back, right?

20 A Yes, sir.

21 Q You don't consider that to be in the course of  
22 your employment or what you were hired to do or  
23 for the benefit of Sunshine, do you?

24 A No, sir.

25 Q McAllister, 19,000 -- almost \$20,000; you



1 remember that?

2 A Yes, sir.

3 Q We're talking about in June of 2003?

4 A Yes, sir.

5 Q That didn't even go anywhere close to Sunshine;  
6 you got that by Federal Express stuck it in  
7 your pocket, and went off and cashed it away  
8 from the business, didn't you?

9 A Yes, sir.

10 Q And matter of fact, I challenge you, sir, to  
11 tell me you filled these things out, even these  
12 fraudulent loans, that you filled them out at  
13 Sunshine Camping because you said you couldn't  
14 remember where you were. Tell me you did that.

15 A I filled them out in the building I'm sure, but  
16 I don't know where.

17 Q But that doesn't mean you were working, does  
18 it, for Sunshine, does it?

19 A I was employed by them.

20 Q You were working for yourself because you were  
21 filling them out to get that money to do  
22 personal reasons and purposes, debts, gambling  
23 debts, right?

24 A Yes, sir.

25 Q That isn't what Sunshine Camping company has

1           ever been thought to exist for, has it?

2       A       No, sir.

3                       MR. SHIRLEY: Just one moment, Your  
4                       Honor. No more questions, Your Honor.

5                       CROSS-EXAMINATION

6       BY MR. MATTHEWS:

7       Q       Mr. Williams, you've told these people the  
8               truth today, haven't you?

9       A       Yes, sir.

10      Q       Now, on the Lawson deals, the bank's out  
11              \$26,000, would you agree with that?

12      A       Yes, sir.

13      Q       And on the McAllister deal, the bank's out  
14              \$20,140, you go --

15      A       Yes, sir.

16      Q       -- along with that? And on the Peters deal,  
17              the bank's out 47,881; is that right?

18      A       Yes, sir.

19      Q       And total of that is \$94,021, right?

20      A       Yes, sir.

21      Q       Now, you've told this jury you're responsible  
22              for that money; is that right?

23      A       Yes, sir.

24      Q       Now, how much of that money did you actually  
25              receive?

1 A That less the 15 and on the --

2 Q All right. 15,000 went to Mr. Borland over  
3 there, right?

4 A Yes, sir.

5 Q What other amounts went to Mr. Borland or went  
6 into the company?

7 A The 26. I'm not sure how much of that I got  
8 back out.

9 Q Part of the 26,000?

10 A Yes, sir.

11 Q You're not sure how much?

12 A I might have got it all, I don't know.

13 Q So between -- what would you say the low amount  
14 might be?

15 A Twenty that I got.

16 Q All right. So from 6,000 -- zero to 6,000,  
17 would you say that?

18 A Yes, sir.

19 Q All right. So you're not sure on that?

20 A No, sir, I'm not.

21 Q Zero to 6,000. So basically you're responsible  
22 for between 64 and \$70,000 that you got in your  
23 pocket; is that right?

24 A I don't know 100 percent sure, but I guess that  
25 would be a good estimate.

1 Q You admit you owe the bank this money?

2 A Yes, sir.

3 Q And they're (inaudible)

4 (Reporter asked for  
5 clarification.)

6 Q I said, the bank is suing you. Comber Borland  
7 and Sunshine are not suing you, are they?

8 A No, sir.

9 Q The bank is suing you?

10 A Yes, sir.

11 Q And you admit that you put in your pocket  
12 between 64 and \$70,000?

13 A Yes, sir.

14 Q And that Mr. Borland and Sunshine received  
15 between 15 and \$21,000 of that money?

16 A Yes, sir.

17 Q Okay. Now, during the McAllister deal and the  
18 Peters deal, did you have check writing  
19 authority on the accounts at the company?

20 A I don't believe so, no, sir.

21 Q You did on the Lawson deal?

22 A Yes, sir.

23 Q Okay. Now, what did Mr. Borland receive for  
24 that \$15,000?

25 A Cashier's check.

1 Q All right. What did you -- what were you  
2 paying him the \$15,000 for?

3 A Off that note.

4 Q Okay. And where -- what did the money come  
5 from of the note that you --

6 A Money that I had taken or Comber actually  
7 loaned me some out of the company, and we  
8 agreed it was 15,000.

9 Q All right. Now, Mr. Shirley was making a big  
10 deal and asking you about him knowing about  
11 your gambling problem.

12 A Yes, sir.

13 Q And you say you didn't know if he knew about  
14 your gambling problem?

15 A Yes, sir.

16 Q Did he know you gambled?

17 A Yes, sir.

18 Q What kind of gambling were you doing?

19 A Pretty much all sports.

20 Q Sports gambling?

21 A Yes, sir.

22 Q Is that like betting on football games and  
23 stuff like that?

24 A Yes, sir.

25 Q Was Mr. Borland betting on football games and

1 stuff like that?

2 A No, sir.

3 Q But he knew you were?

4 A Yes, sir.

5 Q Y'all talked about it?

6 A Yes, sir.

7 Q Okay. Did y'all have any other employees other  
8 than you and him?

9 A For the first year I don't think we -- his son  
10 helped, my brother-in-law. Not really, not  
11 until a year or two, I think, is when he  
12 finally got some other employees.

13 Q That's when you were let go?

14 A Well, no, it was the end of year two.

15 MR. MATTHEWS: That's all. You may  
16 examine.

17 REDIRECT EXAMINATION

18 BY MR. SMITH:

19 Q I want to make sure that everyone is clear  
20 about this, Mr. Williams. On these documents,  
21 these financing documents that you sent to my  
22 client, I'm not gonna pull them out again  
23 because we've seen them and spent time on them,  
24 but was there anything on the face of them? If  
25 Dale York is reading them there at Union

1           Planters Bank, was there anything on the face  
2           of them that would have shown that they weren't  
3           true, that they were false?

4       A     No, sir.

5       Q     I mean, you wanted them to be drawn up so the  
6           folks at the bank would understand -- or  
7           believe, rather, that they were real sales; is  
8           that correct?

9       A     Yes, sir.

10      Q     And so you -- there was nothing on the face of  
11           them that would have indicated, wait, this  
12           isn't a real sale; is that right?

13      A     Yes, sir.

14      Q     You were asked about the McAllister documents  
15           and some that were unsigned. Do you recall  
16           being asked about that by defense counsel over  
17           here?

18      A     Yes, sir.

19      Q     Now, actually there were two McAllister  
20           contracts that were sent to the bank; isn't  
21           that right?

22      A     One when he first came in and one at a later  
23           date.

24      Q     And one was -- the first one was real, wasn't  
25           it?

1 A Yes, sir.

2 Q And it was the second one that wasn't real; is  
3 that right?

4 A Yes, sir.

5 Q I want to show you, and it's already in  
6 evidence, now, the first one. I want this to  
7 be very clear, I want everybody to understand  
8 this, I'm sure they do. I don't want anybody  
9 to be confused. This is page 83 of Exhibit 1.  
10 Now, this is the first one from February of  
11 2003; is that right?

12 A Yes, sir.

13 Q This is the real one, isn't it?

14 A Yes, sir.

15 Q And this one is not signed, is it?

16 A No, sir.

17 Q But there wasn't any money loaned on this first  
18 one, was there?

19 A No, sir.

20 Q So the fact that it's signed or not signed as  
21 this lawsuit's concerned really doesn't mean  
22 anything, does it?

23 A No, sir.

24 Q Because there wasn't any money loaned on it,  
25 right?



1 A Yes, sir.

2 Q Let's look right here. Purchaser's signature  
3 is filled in, isn't it?

4 A Yes, sir.

5 Q Okay. So the fact that what happened in  
6 February was signed or not signed doesn't make  
7 any difference because no money was advanced on  
8 February, was it?

9 A No, sir.

10 Q It was advanced on June, wasn't it?

11 A Yes, sir.

12 Q And both of the McAllister documents from June  
13 were signed, weren't they?

14 A Yes, sir.

15 Q Again, there wasn't anything on the face of  
16 these documents that you submitted to the bank  
17 that would have indicated that there is a  
18 problem or there is anything to be concerned  
19 about on these loans; is that right?

20 A Yes, sir.

21 Q Okay. Now, I want to make sure that I  
22 understand this. Is there any way that you  
23 could have submitted these contracts to the  
24 bank for approval unless you were an employee  
25 of Sunshine?

1 A No, sir.

2 Q I mean, if you had not been working for  
3 Sunshine, could you have gotten these contracts  
4 approved?

5 A No, sir.

6 Q If Sunshine had told the bank that Dale -- that  
7 Jon Williams is no longer authorized to sign  
8 contracts, could you have gotten this money?

9 A No, sir.

10 Q If Sunshine had told the bank that, look, Jon  
11 Williams is removed; he's no longer president  
12 of the company, is there any way that you could  
13 have gotten this money?

14 A No, sir.

15 Q I need to set this up real quickly. I'm sorry,  
16 I don't want to beat this into the ground, but  
17 I have to respond to some of the things that  
18 were brought up. In August of 2002 you  
19 resigned as president of the company and you  
20 were removed from the CB&T account; is that  
21 right?

22 A Yes, sir.

23 Q And you gave Mr. Borland five shares of your  
24 stock; is that right?

25 A Yes, sir.

1 Q And you signed a note for \$15,000, right?

2 A Yes, sir.

3 Q And some part of that \$15,000 was for money  
4 that you had taken from Sunshine without Mr.  
5 Borland's permission; isn't that right?

6 A Yes, sir.

7 Q Money that you had stolen from Sunshine?

8 A Yes, sir.

9 Q And he didn't fire you or run you off, did he,  
10 in August of 2002?

11 A No, sir.

12 Q Even though he knew you had been stealing from  
13 the company, right?

14 A Yes, sir.

15 Q He let you stay on, didn't he?

16 A Yes, sir.

17 Q He let you sign a note?

18 A Yes, sir.

19 Q And one of the reasons that you signed that  
20 note was not -- well, was additional capital  
21 going into the company but also money that was  
22 to obligate you to pay back money that you had  
23 taken from the company without Mr. Borland's  
24 permission and knowledge, correct?

25 A Yes, sir.

1 Q Even though you did that he let you stay on  
2 with the company; is that right?

3 A Yes, sir.

4 Q Now, your name was taken off the checking  
5 account, right?

6 A Yes, sir.

7 Q And why was that done, please?

8 A Didn't want me to have no control over it.

9 Q He didn't want you to be able to sign checks,  
10 did he?

11 A No, sir.

12 Q He didn't really trust you at that point in  
13 time, did he?

14 A No, sir.

15 Q But he let you stay on, didn't he?

16 A Yes, sir.

17 Q Let you keep writing contracts, didn't he?

18 A Yes, sir.

19 Q And it was after that date in August that all  
20 four of these deals that we're here about today  
21 occurred, right?

22 A Yes, sir.

23 Q That's what I thought you told us earlier, I  
24 just wanted to make sure. And again, had your  
25 employment been ended back when he caught you

1 stealing, there's no way you could have done  
2 any of this, was there?

3 MR. SHIRLEY: Object, speculative.

4 THE COURT: I sustain.

5 BY MR. SMITH:

6 Q Well, isn't it true that it was your continued  
7 employment at Sunshine that allowed you to do  
8 these four deals?

9 A Yes, sir.

10 Q Now, when you were working at Sunshine, about  
11 how many campers a month would be sold?

12 A Probably an average of 8, 9.

13 MR. SHIRLEY: We would object if  
14 that's a guess.

15 THE COURT: Overrule.

16 BY MR. SMITH:

17 Q Would Mr. Borland know when campers were sold?

18 A Yes, sir.

19 Q Would he know when they were financed?

20 A Yes, sir.

21 Q Would he know to expect money to come in?

22 A Yes, sir.

23 Q And he's the guy at the company that was  
24 responsible for the checking accounts, wasn't  
25 he?

1 A Yes, sir.

2 Q Whether it's CB&T or SouthTrust or the other  
3 bank, Commercial Bank; wouldn't that be  
4 correct?

5 A Yes, sir.

6 Q He was the only person that had signatory  
7 authority on those checks?

8 A After that timeframe, yes, sir.

9 Q He got the account statements, didn't he?

10 A Yes, sir.

11 Q It would have been real simple for him to look  
12 at those statements and see money coming in,  
13 wouldn't it?

14 A Yes, sir.

15 Q And money going out?

16 A Yes, sir.

17 Q And he knew about sales that were being made,  
18 didn't he?

19 A Yes, sir.

20 Q So he would have known when money would come  
21 into these accounts, correct?

22 A Yes, sir.

23 Q And so this \$26,000 that came in on Lawson, Mr.  
24 Borland would have known that, wouldn't he?

25 A Yes, sir.

1 Q And the \$47,000 that came in on Peters, he for  
2 sure knew that, didn't he?

3 A Yes, sir.

4 Q He never one time questioned you about, hey,  
5 why are we getting \$26,000, why are we getting  
6 \$47,000 and we haven't made a sale? He didn't  
7 question you on that, did he?

8 A Yeah, he asked me what it was.

9 Q And what did you tell him?

10 A I forget on Lawson. Told him I had gotten some  
11 kind of line of credit on Peters.

12 Q And he would see then -- how would you get the  
13 money out of the CB&T account for Lawson and  
14 Peters? How'd you get that out?

15 A By check.

16 Q Who would write the check?

17 A I think Comber wrote the one on Lawson, and I'm  
18 not sure on Peters, whether I got a cashier's  
19 check that same day or what.

20 Q But he's the one that was writing you the  
21 checks, wasn't he?

22 A He's the one had to get it out of the bank.

23 Q Whether it was CB&T or Commercial Bank, there's  
24 no question that this Peters money came into a  
25 Sunshine account, is there?

1 A No, sir.

2 Q There's no question that Mr. Borland knew that  
3 it came into that account; would that be true?

4 A The money, yes, sir.

5 Q The final thing on this second note, the second  
6 \$15,000 note, that was done because you weren't  
7 able to pay the first \$15,000 note back, the  
8 one from August of 2002; isn't that right?

9 A (No response.)

10 Q Isn't that --

11 A Yes, sir.

12 Q -- right? Now, I want to make sure I  
13 understand this. And let's talk about that  
14 April 2003 note. This is already into  
15 evidence. This is page 30 of Exhibit 13. Now,  
16 that's that note from April 2, 2002, isn't it?

17 A Yes, sir.

18 Q And that note wasn't in favor of Sunshine  
19 Camping Center, was it?

20 A No, sir.

21 Q It was in favor of Wallace C. Borland, right?

22 A Yes, sir.

23 Q The gentleman sitting right here?

24 A Yes, sir.

25 Q But money was taken from the Sunshine account



1           on this Peters deal to pay Mr. Borland that  
2           back, right?

3       A     Yes, sir.

4       Q     And that was done with Mr. Borland's knowledge,  
5           wasn't it?

6       A     (No response.)

7       Q     In other words, he knew the money was coming  
8           out of Sunshine's account to pay off that loan  
9           that was made to him individually?

10      A     Yes, sir.

11      Q     Two final points and I'm done. This truck that  
12           was mentioned, I ain't heard this. This truck  
13           that was mentioned, when you were fired that  
14           day, did you get that truck?

15      A     No, sir.

16      Q     Did you drive that truck anymore after that day  
17           in April?

18      A     No, sir.

19      Q     Where was that truck the last time you saw it?

20      A     Sunshine Camping Center.

21      Q     Do you know what Sunshine Camping Center did  
22           with it?

23      A     No, sir.

24      Q     Did you ever make a payment on that truck?

25      A     No, sir.

1 Q Do you know who -- was that truck bought with  
2 cash or was it financed?

3 A It was just bought.

4 Q Okay. But you didn't buy it yourself? You  
5 didn't write a check and make any sort of offer  
6 for it, did you?

7 A No, sir.

8 Q Final point and I'm done. These numbers that  
9 Mr. Matthews wrote up here, those don't include  
10 the finders fees, do they?

11 A Looks like they do. Well, not on McAllister  
12 doesn't. I'm not sure on Lawson.

13 Q You're sure that Lawson, the \$26,000 wasn't  
14 just for the loan and there was some more over  
15 that for Lawson?

16 A That's what I say. I'm not sure on Lawson if  
17 that figure includes the finders fee.

18 Q Do you know whether it does on McAllister?

19 A Yeah, it does.

20 Q Do you know whether it does on Peters?

21 A Looks like it does, yes, sir.

22 Q That's all I've got. Thank you, sir.

23 RE-CROSS EXAMINATION

24 BY MR. SHIRLEY:

25 Q You don't argue with me that you're a liar, do

1 | you?

2 MR. MATTHEWS: Your Honor, I object.

3                    That's an improper question.

4 | BY MR. SHIRLEY:

5	Q	Do you disagree?
---	---	------------------

6 THE COURT: I overrule. Go ahead.

7 | BY MR. SHIRLEY:

8 Q Do you disagree with me that you have told many  
9 lies in this?

10 | A No, sir.

11 Q You haven't ever told any lies? You just said  
12 you told --

13 | A Yes, sir.

14 Q Yeah, I know. See you can't keep it all  
15 straight you've told so many lies, can you,  
16 sir? Sir, yes? Is that right?

17 A In this courtroom I've been honest, yes, sir.

18 Q Oh. You just decided that today you'd be  
19 honest?

20       A       Quite awhile ago, sir.

21 Q Oh, I see. Never mind, thank you.

22 THE COURT: Anything further?

23 MR. MATTHEWS: No questions.

24 THE COURT: Mr. Smith?

25 MR. SMITH: We have no other

1 questions, Your Honor.

2 THE COURT: Thank you, sir, you may  
3 step down.

4 MR. SMITH: Your Honor, we call Dale  
5 York.

6 JIMMY DALE YORK, JR.

7 having been first duly sworn or affirmed, was  
8 examined and testified as follows, to-wit:

9 DIRECT EXAMINATION

10 BY MR. SMITH:

11 Q You are Dale York?

12 A Yes.

13 Q And Mr. York --

14 THE COURT: Pull the microphone up to  
15 you there and speak into it so we can hear  
16 you.

17 Q Where are you employed, Mr. York?

18 A Regions Bank.

19 Q And where is your office located?

20 A 401 Kentucky Avenue, Paducah, Kentucky.

21 Q Are you a native of Paducah?

22 A That area.

23 Q How long have you worked for Regions Bank?

24 A As a total?

25 Q Yes.

1 A Twenty years.

2 Q Now, you've not actually worked for Regions for  
3 twenty years, have you?

4 A No.

5 Q Have you worked with some banks that eventually  
6 became part of Regions?

7 A Yes.

8 Q Let's talk a little bit, if we could, about  
9 your employment in the banking industry.  
10 You've worked in the banking industry for how  
11 long?

12 A Twenty-five years.

13 Q And how old are you now?

14 A I'm 45 years old.

15 Q What was your first employment in the banking  
16 industry? Who did you work for and what did  
17 you do?

18 A The very first in banking or finance was a  
19 finance company. I worked for five years at  
20 Heights Finance. After that went with People's  
21 First National Bank. That was then taken over  
22 by Union Planters which is now Regions bank.

23 Q What have you done during your 25 years in the  
24 bank and finance industry? What's been the  
25 focus of your employment?

1 A Indirect lending.

2 Q And can you tell us what indirect lending is?

3 A Indirect lending is the purchase of third-party  
4 contracts from dealerships, automobile  
5 dealerships, mobile home dealerships, RV  
6 dealership and the like.

7 Q And third-party contracts, what is that?

8 A Third-party contracts are dealership receives  
9 the application and the customer actually goes  
10 there. They apply for the loan. The  
11 information is sent to us. We approve the  
12 credit. They sign the documentation there at  
13 the dealership, forward it on to us, and then  
14 we pay for the loan.

15 Q You're familiar with Sunshine Camping Center,  
16 Incorporated?

17 A Yes.

18 Q And how are you familiar with them?

19 A They're a dealership that we did business with.

20 Q Now, we've looked at it earlier today but do  
21 you recall the dealer agreement?

22 A Yes.

23 Q Did you have anything to do with the creation  
24 of the dealer agreement between Sunshine and at  
25 that time Union Planters?

1 A No, I did not.

2 Q Was there somebody that you were familiar with  
3 that did?

4 A Yes.

5 Q And who was that?

6 A Don Hollifield and John Gill.

7 Q And what did you or what do you understand  
8 their positions to be with the bank at the time  
9 of the recreational vehicle dealer agreement?

10 A Donald, who was a senior vice president, John  
11 Gill was the vice president.

12 Q And would a dealer such as Sunshine Camping  
13 Center have been able to assign contracts to  
14 Union Planters without a dealer agreement such  
15 as we've already seen?

16 A No.

17 Q Let me ask you a little bit about the financing  
18 contracts at issue here. Do you have a  
19 specific memory as we sit here today of  
20 receiving those contracts from Sunshine?

21 A Yes. We did receive contracts from Sunshine.

22 Q And particularly the two Lawson contracts, the  
23 McAllister and the Peters contracts, would  
24 those have been received by someone at Union  
25 Planters Bank?

1 A Yes.

2 Q And would you have been that person?

3 A Not actually receiving it from the fax machine,  
4 no.

5 Q Well, but would the information from the fax  
6 machine have been brought to your attention?

7 A Yes.

8 Q And in order to at the time of these incidents,  
9 to obtain or get approval for financing from a  
10 customer, would it be necessary for the dealer  
11 to provide you with certain information?

12 A Yes.

13 Q And what would that information have been?

14 A Name, address, Social Security number, date of  
15 birth.

16 Q Would there have been any sort of format or  
17 form in which that was presented?

18 A Usually on a consumer credit application.

19 Q And once you received that consumer credit  
20 application, what would you do?

21 A Our department would process that application  
22 for the credit bureau, and we would determine  
23 the credit worthiness of the applicant.

24 Q And how would that be done or how would that be  
25 determined?



1 A I would review the credit application, and the  
2 credit bureau would determine the worthiness of  
3 the customer.

4 Q And how would you determine the credit  
5 worthiness of the customer? What would you do?

6 A We'd look at the credit bureau to see if the  
7 individual had any delinquent credit, making  
8 sure there was no loss accounts on the credit  
9 bureau, job times, just numerous things that we  
10 look at to determine the credit worthiness of a  
11 customer.

12 Q And in particular I want to show you page 39  
13 Exhibit 1, it's already in evidence. I'll just  
14 put it on the screen. Is this the kind of  
15 document you'd look at?

16 A Yes.

17 Q This is for supposedly Robert M. McAllister,  
18 and here's the Social Security number; is that  
19 correct?

20 A Yes.

21 Q And date of birth?

22 A Yes.

23 Q And it's supposedly signed by him?

24 A Yes.

25 Q And there's this information here, credit

1 references or installment -- can't quite read  
2 that.

3 A I believe it's obligations.

4 Q Installment obligations. Thank you. Someone  
5 has written in here. Can you determine what  
6 that is?

7 A Looks like an abbreviation for see bureau.

8 Q See bureau. What does that mean to you?

9 A To review the credit bureau for the  
10 information.

11 Q Now, on this kind of contract is it out of the  
12 ordinary to have that kind of information  
13 written there in your 25 years in the business?

14 A No.

15 Q What does that indicate to you as someone with  
16 25 years of experience in the business?

17 A It would indicate to me that they have several  
18 references in the bureau, just to review the  
19 bureau.

20 Q Is that something that your office had the  
21 capability to do, to review the credit bureau  
22 information?

23 A Yes.

24 Q And was that something that would have been  
25 done before approving any contract?

1 A Most definitely.

2 Q So on this contract or this customer statement  
3 here received supposedly from Mr. McAllister,  
4 does the fact that it has see bureau written  
5 in, does that in any way hinder your ability or  
6 the bank's ability to determine whether to lend  
7 or not to lend money?

8 A No.

9 Q It would have been checked anyway?

10 A Most definitely.

11 Q Now, I don't want to run through each one of  
12 these documents that was sent, we have already  
13 been through with them -- through them. But  
14 would it have been true that based on  
15 information supplied to you by Sunshine Camping  
16 Center, you approved the two Lawson,  
17 McAllister, and Peters deal?

18 A I am the approving officers on those deals.

19 Q On all of them?

20 A On all of them.

21 Q Once you had approved all four of those deals,  
22 what would you have done?

23 A Notified the dealership that they had been  
24 approved by fax.

25 Q And would you have expected anything from the

1 dealership after that?

2 A Well, we hope the loans that we approve we do  
3 receive there. They have the opportunity to  
4 send them to other institutions if they so  
5 elect, if they approve those. But, yes, we  
6 like to receive those.

7 Q And how would you know -- well, let me ask you  
8 this. Would it be the dealer that would make  
9 the determination as to who would be the buyer  
10 of the contract?

11 A Yes.

12 Q So in other words, since we're talking about  
13 McAllister, page 36 of Exhibit 1, there's the  
14 assignment here to Union Planters Bank. It's  
15 signed by Mr. Williams. On this financing  
16 agreement would it have been Sunshine Camping  
17 Center that made the determination whether to  
18 assign this to Union Planters as opposed to  
19 some other institution?

20 A Yes.

21 Q But you would have approved this arrangement  
22 based upon the information provided to you by  
23 Sunshine Camping Center?

24 A That's correct.

25 Q And that would be true for both of the Lawson

1 loans and the Peters loan as well, correct?

2 A Yes.

3 Q Would this document here have been provided to  
4 Union Planters Bank?

5 A Yes.

6 Q After the sale had been completed?

7 A That's correct.

8 Q And would that also hold true for the two  
9 Lawson and the Peters loans?

10 A Yes.

11 Q Well, typically it would be provided if there  
12 was a sale, correct?

13 A That is correct.

14 Q Was there anything that you saw on any of these  
15 documents that we've reviewed today related to  
16 Lawson, Peters, or McAllister that would have  
17 indicated to you that something was improper or  
18 amiss about any of these transactions?

19 A No.

20 Q Based on your 25 years of experience in the  
21 industry would that be the case?

22 A That's correct.

23 Q And so upon receipt of this document here would  
24 Union Planters have done anything?

25 A They would process or we would process the loan

1 to fund the deal.

2 Q What do you mean by fund the deal?

3 A Pay the money to Sunshine.

4 Q Now, was Union Planters relying on the  
5 information that was contained in this  
6 document?

7 A Yes.

8 Q And the similar document for the two Lawson and  
9 the McAllister and the Peters transaction?

10 A Yes, sir.

11 Q Did you believe that information?

12 A Yes.

13 Q And because of that did you go through with the  
14 funding?

15 A Yes.

16 Q I want to ask you about the Lawson transaction.  
17 I call your attention to Exhibit 2-1, Mr. York,  
18 you're going to need to look at that. One of  
19 these right here. There I go.

20 A Okay.

21 Q The first page of that document, do you  
22 recognize that?

23 A Yes, I do.

24 Q Tell us what that is.

25 A It's a data entry form that we use.

1 MR. SMITH: Your Honor, we'd offer  
2 page 1.

3 THE COURT: All right, sir.  
4 Admitted.

5 MR. SHIRLEY: I'm not sure they know  
6 what you're talking about.

7 THE COURT: You need to see it?

8 MR. SMITH: Page 1 of Exhibit 2-1.

9 (Whereupon, Plaintiff's Exhibit  
10 Number 2-1, page 1, was marked  
11 for identification and admitted  
12 into evidence.)

13 BY MR. SMITH:

14 Q Now, what does that reflect?

15 A It's the information that we received off the  
16 credit application and the contract. Also  
17 additional information as to how we funded the  
18 deal and also paid the dealership.

19 Q This document here, disbursements, you see the  
20 portion of the document called disbursements?  
21 You see that?

22 A Yes.

23 Q What does that, what does the information there  
24 indicate, please?

25 A The information there looks to be a check

1           number and a dollar amount 18,216.50 paid to  
2           Sunshine Camping Center. Below that is another  
3           check number with amount of \$1,092 and I  
4           believe it's 99-cents to Sunshine Camping  
5           Center for a finders fee.

6       Q       Were those monies paid?

7       A       Yes.

8       Q       Would they have been paid but for the  
9           information contained in the financing  
10          documents relating to Lawson?

11      A       No.

12      Q       Now, let me -- just a second. Let me now ask  
13           you about the second Lawson loan. You'll need  
14           to look at Exhibit 7, which you should have  
15           there.

16      A       Yes.

17      Q       All right.

18                   MR. SMITH: Your Honor, just a  
19                   second. I've misplaced a document here.  
20                   Page 145.

21                               (Whereupon, Plaintiff's Exhibit  
22                               Number 7, page 145 was marked  
23                               for identification.)

24      A       Okay.

25      Q       You familiar with that?



1 A Yes.

2 Q And what is that?

3 A It was another indirect loan data entry form.

4 Q Was this for the second Lawson loan?

5 A Yes, it was.

6 MR. SMITH: Your Honor, we'd offer  
7 page 145 of Exhibit 7.

8 THE COURT: It's admitted.

9 (Whereupon, Plaintiff's Exhibit  
10 Number 7, page 145, was  
11 admitted into evidence.)

12 BY MR. SMITH:

13 Q Does this reflect monies paid on account of the  
14 second Lawson loan?

15 A Yes, it does.

16 Q And under the disbursements what does that  
17 indicate?

18 A Indicates that \$8,516.06 was sent to Sunshine  
19 Camping Center with another amount of \$1,340,03  
20 as a finders fee and a payoff of 18,284.56 for  
21 the prior loan.

22 Q For the prior loan?

23 A Yes.

24 Q Those three figures, though, represent money  
25 advanced by the bank --

1 A That's correct.

2 Q -- would that be true? Would the bank have  
3 advanced that money but for the information  
4 contained in the retail installment contract  
5 and security agreement relating to the second  
6 Lawson loan?

7 A No.

8 Q Now, with regard to the first Lawson loan, it  
9 would have been paid off; would that be true?

10 A Yes.

11 Q Paid off with the proceeds from the second  
12 loan; is that right?

13 A That's correct.

14 Q Was there a point in time that the bank decided  
15 to assign the second Lawson loan to a loss  
16 account?

17 A Yes.

18 Q And can you tell the members of the jury what a  
19 loss account is?

20 A A loss account for purposes of the bank is  
21 deemed uncollectible at that point in time, but  
22 it's moved from an active account to inactive  
23 account.

24 Q And is the fact that the -- is that done for  
25 accounting purposes?

1 A Yes.

2 Q Does the fact that that's done for accounting  
3 purposes, does that indicate that the money is  
4 not owed anymore?

5 A No.

6 Q Or that the money has somehow been paid back?

7 A No.

8 Q I'd like you to look at page 9 of Exhibit 2,  
9 please.

10 MR. SHIRLEY: I'm sorry, you got your  
11 back to me I couldn't hear it.

12 MR. SMITH: Page 9 of Exhibit 2.

13 (Whereupon, Plaintiff's Exhibit  
14 Number 2, page 9, was marked  
15 for identification.)

16 A Okay.

17 Q Do you recognize that document?

18 A Yes, I do.

19 Q Would you tell us what that is?

20 A This is a checklist form for Union Planters.

21 Q Is that a document you're familiar with?

22 A Yes, it is.

23 Q Does it relate to the second Lawson loan?

24 A I'm not able to tell by this form alone if it  
25 is related to the second one.

1 Q Well, is there another document within  
2 Exhibit 2 that you might use? Turn back a  
3 page. I think we're confused on -- this one,  
4 this document. I'm sorry. Okay. Page 9 of  
5 Exhibit 2, I'm sorry.

6 A This is the document I'm familiar with.

7 Q Now, what is that?

8 A This is a written account of the loss showing  
9 that for accounting purposes moved this to a  
10 loss account.

11 Q For the second Lawson loan?

12 A Yes.

13 MR. SMITH: Your Honor, we'd offer  
14 page 9 of Exhibit 2.

15 THE COURT: It's admitted.

16 (Whereupon, Plaintiff's Exhibit  
17 Number 2, page 9, was admitted  
18 into evidence.)

19 BY MR. SMITH:

20 Q Now, we heard testimony earlier that there may  
21 have been some money that was paid back on this  
22 second Lawson loan, do you recall that?

23 A Yes.

24 Q There's a number here next to a date of  
25 June 15, 2004, do you see that?

1 A Yes, I do.

2 Q The number's 25,838.75 --

3 A Yes.

4 Q -- is that correct? Is that a dollar amount?

5 A Yes, it is.

6 Q What does that dollar amount represent?

7 A The loss that we suffered on this particular

8 account.

9 Q And does that include interest?

10 A Yes.

11 Q And does that include the loan less any

12 payments paid on --

13 A Yes.

14 Q Does it include the finders fee?

15 A No, it does not.

16 Q So just on the loan 25,838.75; is that correct?

17 A That is correct.

18 Q Plus the finders fee, correct?

19 A That is correct.

20 Q Does it also include the finders fee for the

21 first Lawson loan?

22 A No, it does not.

23 Q Is that also a loss?

24 A Yes, it is.

25 Q Because --

1 A Should never have been paid.

2 Q Should never have been paid; is that correct?

3 A Yes.

4 Q Gonna write plus finders fee twice. I want to  
5 call your attention again to the McAllister  
6 loan. Call your attention to page 45 of  
7 Exhibit 1.

8 (Whereupon, Plaintiff's Exhibit  
9 Number 1, page 45 was marked  
10 for identification.)

11 A Okay.

12 Q Do you recognize that?

13 A Yes, I do.

14 Q And tell us what that is.

15 A Is the same transaction as before only on  
16 another account.

17 Q On the McAllister. This one is on the  
18 McAllister?

19 A On McAllister.

20 MR. SMITH: Your Honor, we'd offer  
21 that document page 45 of Exhibit 1.

22 THE COURT: It's admitted.

23 (Whereupon, Plaintiff's Exhibit  
24 Number 1, page 45, was admitted  
25 into evidence.)

1 BY MR. SMITH:

2 Q Does that represent a loss on the McAllister  
3 transaction by the bank?

4 A Yes, it does.

5 Q And what does it indicate that the bank showed  
6 the loss for that deal to be?

7 A 19,187.19.

8 Q Is that less any payments that may have been  
9 made on that --

10 A Yes.

11 Q -- loan plus interest?

12 A Yes.

13 Q But does not include the finders fee?

14 A It does not include the finders fee.

15 Q Now, it's carried as a criminal loss Sunshine  
16 Camping; is that right?

17 A Yes.

18 Q Not carried as a criminal loss Jon Williams,  
19 was it?

20 A No.

21 Q The money was paid to Sunshine Camping Center  
22 on both this and the McAllister loan, wasn't  
23 it?

24 A That's correct.

25 Q And the same would be true for Peters, wouldn't

1 it?

2 A Yes.

3 Q Before we talk about Peters let me ask you  
4 this. Was the bank -- was Jon Williams up  
5 until January of 2004 ever taken off of an  
6 authorized person to assign accounts for  
7 Sunshine Camping Center?

8 A Not to my knowledge.

9 Q Was there any documentation that reflected that  
10 Sunshine did not want Mr. Williams assigning  
11 loans?

12 A No, there was not.

13 Q Was there any documentation to reflect that  
14 Sunshine did not want Mr. Williams to submit  
15 financing agreements?

16 A No, there was not.

17 Q Or get customers approved for financing?

18 A No.

19 Q Did the bank know anything about Mr. Williams  
20 being removed from the CB&T checking account?

21 A No.

22 Q Or resigning as president?

23 A No.

24 Q Or the entering into a note to pay back \$15,000  
25 that had been taken from the company?



1 A No.

2 Q Or transferring any interest in stocks that he  
3 had?

4 A No.

5 Q Did the bank know anything about this second  
6 note for \$15,000?

7 A No.

8 Q Did the bank know anything about Mr. Borland  
9 getting a hundred percent of the shares of the  
10 stock of the company?

11 A No.

12 Q Up until January of 2004 did the bank know  
13 anything that would have prevented Mr. Williams  
14 from attaining financing for customers and  
15 assigning financing contracts?

16 A No.

17 Q And, in fact, until this lawsuit got started  
18 did you know anything about these loans that  
19 were made?

20 A No.

21 Q Let me talk to you about the Peters loan now.  
22 I want you to look at page 130 of Exhibit 7 if  
23 you would, please.

24 (Whereupon, Plaintiff's Exhibit  
25 Number 7, page 130, was marked

1 for identification.)

2 A 130?

3 Q Yes.

4 A Okay.

5 Q What are we looking at there?

6 A Data entry form.

7 Q And is it for the Peters loan?

8 A Yes, it is.

9 MR. SMITH: Your Honor, we'd offer  
10 page 130 of Exhibit 7.

11 THE COURT: It's admitted.

12 (Whereupon, Plaintiff's Exhibit  
13 Number 7, page 130, was  
14 admitted into evidence.)

15 BY MR. SMITH:

16 Q What does that show?

17 A It shows that we paid Sunshine Camping Center  
18 45,171.50 and \$2,710.29 first for proceeds and  
19 second for finders fee through a wire transfer.

20 Q And that was on the Peters loan?

21 A That is correct.

22 Q Do you have Exhibit 10 up there with you, you  
23 may not? No, you don't, I've got it. I show  
24 you Exhibit 10 and ask you if you recognize  
25 that?

1 A Yes, I do.

2 Q And would you tell the members of the jury what  
3 that is?

4 A This is an internal form showing the wire  
5 transfer to Sunshine Camping Center's -- or  
6 Sunshine Camping Incorporated's checking  
7 account.

8 Q And what does it indicate was transferred?

9 A 45,171.50.

10 MR. SMITH: Your Honor, we'd offer  
11 Exhibit 10.

12 THE COURT: Admitted.

13 (Whereupon, Plaintiff's Exhibit  
14 Number 10 was admitted into  
15 evidence.)

16 BY MR. SMITH:

17 Q Do you have Exhibit 3 with you?

18 A Yes.

19 Q All right. Turn to page 11, if you would.

20 (Whereupon, Plaintiff's Exhibit  
21 Number 3, page 11, was marked  
22 for identification.)

23 A Okay.

24 Q What is that?

25 A That is the loan loss accounting.

1 Q For the Peters loan?

2 A That is correct.

3 MR. SMITH: Your Honor, we'd offer  
4 page 11.

5 THE COURT: Admitted.

6 (Whereupon, Plaintiff's Exhibit  
7 Number 3, page 11, was admitted  
8 into evidence.)

9 BY MR. SMITH:

10 Q Now, what does the number 45,585.68 represent?

11 A The loss that was incurred on this account.

12 Q That would be the amount -- the sums advanced?

13 A Yes.

14 Q Less any payments?

15 A Yes.

16 Q Plus interest?

17 A That is correct.

18 Q Would it include a finders fee?

19 A No, it would not.

20 Q Now, how did it come to your attention that  
21 these -- that the McAllister, Lawson, and  
22 Peters loans were fraudulent loans?

23 A Came to my attention through our security  
24 officer, Mel Channell.

25 Q And what do you understand Mr. Channell's

1 duties to be?

2 A He -- to my knowledge he was the security  
3 officer for Union Planters Bank.

4 Q And once it came to your attention did you do  
5 anything to try to collect those monies?

6 A No, I did not.

7 Q Well, did you send a request to Sunshine  
8 Camping Center to pay off the Lawson,  
9 McAllister, and Peters loans?

10 A Yes, I did, after they were deemed they were  
11 fraudulent accounts.

12 Q I'd ask to you look at Exhibit 1, page 7.

13 (Whereupon, Plaintiff's Exhibit  
14 Number 1, page 7, was marked  
15 for identification.)

16 BY MR. SMITH:

17 Q Okay. Okay. Do you recognize that document?

18 A Yes, I do.

19 Q And tell us what that is.

20 A This is our request to Sunshine Camping Center  
21 and Wallace Borland for the monies that were  
22 due us on fraudulent accounts.

23 MR. SMITH: Your Honor, we'd offer  
24 page 7 of Exhibit 1.

25 THE COURT: It's admitted.

(Whereupon, Plaintiff's Exhibit  
Number 1, page 7, was admitted  
into evidence.)

BY MR. SMITH:

Q Now, this is dated June 11, 2004, is it not?

A Yes.

Q And that is approximately the same time, dated  
as the same time as these criminal loss account  
forms we looked at; is that correct?

A Yes.

Q And you sent this to Sunshine Camping Center,  
did you not?

A Yes, I did.

Q That is you, Dale York?

A Yes, it is.

Q How did you send it to them?

A I believe, if I'm not mistaken, it was mailed  
to them certified.

Q All right. You state here the second paragraph  
as per our dealer agreement dated January 26,  
2002, we're demanding the payoffs of 90,000 --  
\$90,763.54 total; is that correct?

A Yes.

Q And that's what you determine McAllister,  
Lawson, and Peters contracts to total at that

1 time; is that right?

2 A That's correct.

3 Q That did not include the finders fee, did it?

4 A No, it did not.

5 Q Should it have included the finders fee?

6 A Yes, it should have.

7 Q As of today has Sunshine Camping Center under  
8 the terms of the dealer agreement paid off  
9 those contracts?

10 A No, they have not.

11 Q Now, at the time this document was sent on  
12 June 11, 2004, was the company that was the  
13 owner of these loans Union Planters Bank?

14 A 2000 -- yes, it was Union Planters Bank.

15 Q Now, subsequent to that did Union Planters Bank  
16 and Regions Bank, to your knowledge, merge?

17 A Yes, it did.

18 Q As part of that merger, to your knowledge and  
19 understanding did Regions acquire all of the  
20 accounts of Union Planters Bank?

21 A Yes, they did.

22 Q Including the criminal loss accounts?

23 A Yes.

24 Q Would Regions have been an assignee of Union  
25 Planters Bank to your knowledge and

1 understanding?

2 A Yes.

3 MR. SHIRLEY: Object. That calls for  
4 a legal opinion.

5 THE COURT: Overruled.

6 BY MR. SMITH:

7 Q You may answer.

8 A Yes.

9 Q So when we're here today as Regions, it is  
10 Regions that is the owners of these accounts  
11 that were charged off, and I've written here in  
12 red as criminal losses; is that correct?

13 A Yes, that's correct.

14 Q Now, under the terms of the dealer agreement,  
15 show you paragraph 6 of the dealer agreement.  
16 You see what I'm referring to?

17 A Yes.

18 Q Does that also include reasonable attorneys  
19 fees?

20 A Yes, it does.

21 Q Has Regions incurred attorneys fees in  
22 prosecuting this lawsuit to get the money back?

23 A Most definitely.

24 Q Do you know what those attorneys fees are?

25 MR. SHIRLEY: We object. That's



1                   hearsay. The fact that he knows what they  
2                   are does not establish they're reasonable  
3                   as required in any type of indemnification  
4                   even if they were to seek to have this  
5                   under this agreement. What he paid is  
6                   irrelevant and immaterial.

7                   MR. SMITH: It's a question for the  
8                   jury to resolve, Your Honor.

9                   THE COURT: I'm gonna sustain the  
10                  objection to the extent that no predicate  
11                  for his knowledge of those fees have been  
12                  laid.

13                BY MR. SMITH:

14                Q     Okay. Well, do you know what the fees are?

15                A     Not at the present time.

16                Q     Okay. Do you understand that there are records  
17                      and documents that would reflect what those  
18                      fees are?

19                A     Yes.

20                Q     Do you believe that those fees are reasonable?

21                    MR. SHIRLEY: Object to that.

22                    What -- that's just a representative who  
23                    is a nonexpert coming in here giving his  
24                    opinion. That invades the province of the  
25                    jury if that's what it's for. That's

1 inadmissible and irrelevant for him to  
2 express reasonableness of something when  
3 he's not competent to decide how it's all  
4 done. He has no qualification or  
5 predicate to decide it. Doesn't even know  
6 what the law of Alabama is about what  
7 reasonable attorneys fees are.

8 MR. SMITH: I think he can give his  
9 opinion as to whether they're relevant or  
10 not, Your Honor --

11 MR. SHIRLEY: His opinion is not  
12 evidence.

13 MR. SMITH: Well, wait --

14 MR. SHIRLEY: That's the point.

15 MR. SMITH: Your Honor, I think he  
16 can express his opinion as to whether  
17 they're reasonable or not.

18 THE COURT: I overrule the objection.

19 MR. SHIRLEY: Sir?

20 THE COURT: I overrule the objection.

21 MR. SHIRLEY: All right. Then let me  
22 make certain, he is asking --

23 MR. SMITH: May we do this out of the  
24 presence of the jury, Your Honor, if  
25 Mr. Shirley's going to make a speech about

1 this?

2 MR. SHIRLEY: He is asking for an  
3 opinion of a lay witness. What he's  
4 asking him to testify to is what has been  
5 charged or to the extent of what they are  
6 or to the extent his opinion. That is not  
7 competent evidence for a lay witness. It  
8 does not offer any clarity or evidence of  
9 reasonableness, clarity, properness,  
10 anything. All it'll do is confuse the  
11 jury.

12 THE COURT: I overrule the objection.

13 MR. SMITH: Okay.

14 MR. SHIRLEY: We except.

15 BY MR. SMITH:

16 Q Do you believe those to be reasonable,  
17 Mr. York?

18 A Yes.

19 Q Let me show you what I have marked as  
20 Exhibit 15 in this matter.

21 (Whereupon, Plaintiff's Exhibit  
22 Number 15 was marked for  
23 identification.)

24 BY MR. SMITH:

25 Q Do you understand that to reflect the attorneys

1 fees and expenses Regions has incurred in  
2 pursuing this matter to try to collect these  
3 monies?

4 A Yes, I do.

5 Q And what is the amounts of those fees?

6 MR. SHIRLEY: Object. Same  
7 objection, Your Honor.

8 THE COURT: I overrule.

9 MR. SHIRLEY: All right, sir.

10 A \$46,979.47, current.

11 MR. SMITH: Your Honor, we would move  
12 to admit Union Exhibit 15.

13 MR. SHIRLEY: We except.

14 THE COURT: I overrule your  
15 objection. It'll be admitted.

16 Exhibit 15?

17 MR. SMITH: Yes, sir, Exhibit 15.

18 (Whereupon, Plaintiff's Exhibit  
19 Number 15 was admitted into  
20 evidence.)

21 BY MR. SMITH:

22 Q Mr. York, I believe those are all the questions  
23 I have for you. Mr. Shirley may have some  
24 questions.

25 MR. SHIRLEY: Are you ready for me to

1 go ahead, Your Honor?

2 THE COURT: Yeah. We need to take a  
3 recess at this time. If you'll go with  
4 the bailiff to the jury room we'll take a  
5 short recess.

6 (The jury left the courtroom.)

7 (Break in the proceedings.)

8 MR. MATTHEWS: Judge, I've got a  
9 little motion to make before the jury  
10 comes in, and it's not to this witness but  
11 the next witness. But I don't want to  
12 disrupt the flow of the trial or anything,  
13 but the witness after this witness is  
14 gonna be an ABI agent. And I'd like to  
15 make a motion in limine that he not  
16 discuss any case other than the present  
17 case. He's got other cases, my client  
18 does. And I'd ask that he not testify to  
19 any other investigation of him other than  
20 with the facts of these cases, these four  
21 events that are the source of this civil  
22 case.

23 MR. KNIGHT: We weren't gonna go into  
24 that, Your Honor.

25 THE COURT: What about you,

1 Mr. Shirley?

2 MR. SHIRLEY: Well, I -- yes, sir,  
3 I'd like the record to reflect that I  
4 intended to ask him questions about it  
5 because I think that his conduct relevant  
6 to the time of this matter demonstrates  
7 that Mr. Williams is not trustworthy. And  
8 I think I understand what he means. It's  
9 relevant to this case, but from the  
10 standpoint of the foundation of this case  
11 that's not all that this witness -- for  
12 example, I don't know, I've never talked  
13 to the witness to know what Mr. Williams  
14 himself has ever told him about any of the  
15 matters, i.e., the one if it's not a crime  
16 surely it's a element of evidence to  
17 demonstrate that he went and got \$10,000  
18 from the Hartford Bank on a fraudulent  
19 conveyance of a title of a document from  
20 Sunshine Camping. And that was one of the  
21 things that came up in his investigation  
22 and why he ever got into the case. Why,  
23 it's my -- I could only --

24 THE COURT: Well --

25 MR. SHIRLEY: Yes, sir?

1 THE COURT: What would be the purpose  
2 of questioning him concerning any other  
3 criminal activity of Mr. Williams?

4 MR. SHIRLEY: Well, it is -- would --

5 THE COURT: In view of the fact that  
6 Mr. Williams has admitted doing everything  
7 he's been accused of in this case.

8 MR. SHIRLEY: I don't think that  
9 we've been permitted to asking him about  
10 the Hartford Bank issue.

11 THE COURT: Okay. I'm not familiar.  
12 Is that something --

13 MR. SHIRLEY: That's one of the  
14 things --

15 THE COURT: That's not been brought  
16 up so far?

17 MR. SHIRLEY: Yes, sir. It's one of  
18 the ones that he pled to that is in his  
19 whatever criminal status he's in now. One  
20 of the ones that they objected to us  
21 getting into.

22 MR. MATTHEWS: That's the conviction  
23 that Mr. Shirley attempted to get --

24 THE COURT: I'm gonna grant the  
25 motion in limine.

1 MR. SHIRLEY: And we would like the  
2 record to reflect that we object.

3 THE COURT: All right. Anything else  
4 before we bring the jury back again?

5 (The jury entered the  
6 courtroom.)

7 THE COURT: Mr. Shirley, you may  
8 cross-examine.

9 MR. SHIRLEY: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. SHIRLEY:

12 Q Mr. York, what's your position with Regions  
13 Bank?

14 A Present position is indirect lender three.

15 Q I'm sorry?

16 A Indirect lender three.

17 Q Okay. And Union Planters what was it?

18 A Vice president.

19 Q Vice president of what?

20 A Indirect lending.

21 Q You told me in your deposition -- you remember  
22 we took your deposition?

23 A Yes.

24 Q You remember giving your deposition? You told  
25 me that Mr. Hollifield and Mr. Gill were the



1           ones that were in that department that had  
2           something to do with procuring and obtaining  
3           the dealer agreement; is that correct?

4       A     Yes.

5       Q     That wasn't your department?

6       A     That's correct.

7       Q     And you're not in collections?

8       A     No.

9       Q     And as of this very moment you're not in  
10       collections with Regions?

11      A     No.

12      Q     You're not a lawyer, are you?

13      A     No.

14      Q     You've never practiced law, don't have a  
15       license, right?

16      A     No.

17      Q     Any opinion you hold today about that exhibit  
18       that was introduced about attorney fees, that's  
19       just an opinion you hold as an individual  
20       without any legal training, right?

21      A     Yes.

22      Q     It's also an opinion with someone who's in the  
23       financing industry that doesn't have anything  
24       to do with collections, right?

25      A     That's correct.

1 Q It's also an opinion that's been offered by  
2 someone that doesn't know what's reasonable or  
3 unreasonable, correct?

4 A I cannot answer.

5 MR. SMITH: I object to the form of  
6 the question, Your Honor.

7 THE COURT: Hold on just a minute  
8 before you answer.

9 MR. SMITH: We object to the  
10 question, Your Honor, it's argumentative.

11 THE COURT: I overrule.

12 MR. SHIRLEY: I'm sorry?

13 THE COURT: I overrule the objection.  
14 You may ask the question.

15 MR. SHIRLEY: I'm sorry.

16 A Would you like to repeat it, please?

17 Q Well, why don't we let the court reporter read  
18 it back. She looks like she's about to go to  
19 sleep. Just kidding.

20 (Reporter read back the two  
21 questions immediately before  
22 the objection.)

23 A I can't answer that question.

24 Q Well, then, if you can't answer that question,  
25 you'd have to agree with me you have no

1 foundation for knowing whether those attorney  
2 fees are reasonable or not, right?

3 A Doesn't have to agree with you, no.

4 Q Huh?

5 A I do not have to agree with you, no, I do not.

6 Q All right. You don't have any reason that you  
7 could tell me that you know those fees are  
8 reasonable, do you?

9 A That's correct.

10 Q Okay. Well, that's what I wanted to be sure  
11 of.

12 MR. SHIRLEY: This time we move to  
13 exclude him because he has established and  
14 indicated to the Court that he has no  
15 predicate for basing any kind of opinion  
16 or any qualification as to why and how  
17 those attorney fees are reasonable. And  
18 part of proof for damages of attorney fees  
19 is reasonable and necessary. This witness  
20 is not competent to do that.

21 MR. SMITH: Your Honor, you've  
22 already allowed him to testify as a lay  
23 witness in that regard, and I see no  
24 reason for Your Honor to overrule or  
25 sustain this objection given your prior

1 ruling.

2 THE COURT: I'm going to reserve a  
3 ruling on that motion.

4 MR. SHIRLEY: Thank you, Your Honor.

5 BY MR. SHIRLEY:

6 Q Do you consider that what your testimony has  
7 been today to be opinion evidence?

8 A As to what?

9 Q As to what --

10 A Give me specific.

11 Q -- this means on this document up here and what  
12 this and whether we would do that and whether  
13 we would do this, do you consider that opinion  
14 evidence?

15 A As it relates to my job, no, it's not opinion.

16 Q Okay. You do, in fact, know that Union  
17 Planters had guides and policies about  
18 underwriting indirect loans, do you not?

19 A Yes.

20 Q And what I've done is I've got together what  
21 Mr. Smith has produced, and let me show you to  
22 indicate this. You see that on there, page  
23 139?

24 A Yes.

25 Q And you see the word "Union Planters"?

1 A Yes.

2 Q And this is a copy because obviously when I  
3 took your deposition, if I understand it  
4 correctly, the documentation that I have been  
5 furnished was on a computer and had to be  
6 printed up.

7 A That's correct.

8 Q And I want you to -- let me take this apart and  
9 put the clip on there in hopes I won't drop it.  
10 And I was gonna skip back to the last page that  
11 says 0154 and it's got Union Planters.

12 A Okay.

13 Q And what I am saying to you is that these  
14 documents are numbered by page for  
15 identification purposes to me to show that I  
16 received them, pages 0139 through 0154.

17 A Okay.

18 Q Okay. And this is what you -- can you look at  
19 that and look at those headings and confirm  
20 that was, in fact, what the policies and  
21 procedures were relative to indirect writing at  
22 that time?

23 A Yes.

24 Q Okay. You're familiar enough with them that  
25 you don't have to thumb through them like I

1 would, right?

2 A Well, I would want to look at them.

3 Q Okay. Well, just take a moment to -- I've made  
4 myself a copy. And what I'm trying to do is  
5 look at a copy and go back over there and ask  
6 you some questions. And it says -- you see the  
7 general policy, that's the first two pages?

8 A Yes.

9 Q It says lending policy relative to dealer  
10 agreement. You see that, don't you?

11 A Yes.

12 Q Then it says dealer approvals. What had to go  
13 through with the dealer approval, right?

14 A Yes.

15 Q And then it says applications, underwriting,  
16 and credit approval. And you see that's at  
17 page -- and some reason mine doesn't have a  
18 page number. Yeah, thank you, 144.

19 A Yes.

20 Q That's part of the rules, isn't it?

21 A Yes.

22 Q Looks like you got a copy of everything I have,  
23 doesn't it?

24 A I believe so.

25 Q Now, let me ask you to look back at page 144.

1 And on 144 it has all that information on  
2 there, and this is what the guides were at the  
3 time the loans involved in this lawsuit  
4 occurred. There was some 23 in number, was it  
5 not?

6 A There are 23 here, yes.

7 Q And would you agree with me that the  
8 applications that had been sent in and have  
9 been introduced into evidence, they were not  
10 filled out to every nth degree?

11 A Not every instance, no.

12 Q But this is what your company told you should  
13 be the policy and the guide to be followed if  
14 in fact you were going to act on somebody's  
15 loan?

16 A This is a policy that the bank provides us,  
17 which we have guidelines to go by, and we can  
18 deviate from this policy.

19 Q You can deviate from them if you feel  
20 comfortable enough with Jon Williams, right?

21 A Yes.

22 Q So it's your discretion, isn't it?

23 A It could be my discretion.

24 Q And it was your discretion, wasn't it?

25 A Yes.

1 Q Now, you remember that there's a -- and if you  
2 would, just sit that right here on the corner.  
3 Let me go ahead and finish this. I think it'll  
4 probably be easier if I go ahead and finish. I  
5 wanted to go back. You recall giving testimony  
6 about a form that was issued, and I'll show you  
7 what I've identified as Defendant's Exhibit K.  
8 And I would represent to you that this document  
9 came from Mr. Mel Channell's computer or file.  
10 Okay?

11 (Whereupon, Defendant Sunshine's  
12 Exhibit K was marked for  
13 identification.)

14 MR. SMITH: Which page is that?

15 MR. SHIRLEY: I can't remember.

16 It'll take me a minute.

17 MR. SMITH: Can I see it a minute --

18 MR. SHIRLEY: Sure, sure.

19 MR. SMITH: -- so I can understand?

20 MR. SHIRLEY: Sure. I might can find  
21 it right here.

22 MR. SMITH: It's page six. It's  
23 right on there, Mr. Shirley.

24 MR. SHIRLEY: Okay. Good.

25 BY MR. SHIRLEY:



1 Q Now, this would be --

2 MR. SMITH: Don't be confused.

3 BY MR. SHIRLEY:

4 Q This would be from Mr. Channell's -- is it  
5 Channell or Channell (pronouncing)?

6 A I believe it's Channell.

7 Q His exhibit that we've talked about is number  
8 7. You know, Exhibit Number 7 that has several  
9 documents in it.

10 A Okay.

11 Q And I need to know do you know that.

12 A That they're all related to Number 7?

13 Q No, no, no. You see, this is what we've been  
14 talking about, Plaintiff's Exhibit Number 7,  
15 Mel Channell's documents.

16 A I see that.

17 Q Okay. And I believe that it's not in these  
18 documents, but I believe that it was produced  
19 to me by your attorney as he so astutely called  
20 to my attention page 6. And it says it's going  
21 where?

22 A It goes to Daniele Cain, Dale York, Bryan  
23 Grissom and Ronnie Gross.

24 Q Can you authenticate this as being a correct  
25 document that told you and the other people to

1 create a criminal loss?

2 A It was sent to a Daniele Cain. It was carbon  
3 copied to me. I did not create a criminal  
4 loss.

5 Q Well, what's the date on it?

6 A June 11th, 2004.

7 Q And isn't that what you testified earlier in  
8 deposition that you were doing? Changing,  
9 creating a criminal loss at the notification  
10 from Mr. Channell, Channell (pronouncing), your  
11 security officer to do so?

12 A I cannot create a criminal loss.

13 Q Okay. Well, this says he did, correct? That's  
14 my understanding.

15 A It does ask to be asked of Daniele Cain to do  
16 that.

17 Q All right. And they sent you a copy of that?

18 A That is correct.

19 Q And then sometime on June the 11<sup>th</sup> or  
20 sometime -- is that not when you zeroed out all  
21 the accounts with the criminal loss?

22 A I did not do that, no.

23 Q Who did?

24 A I do not know.

25 Q Well, you've testified it was done, don't you?

1 A It shows that on the documents that was --

2 Q Well, that's what I was trying to be sure of.  
3 And I say it correctly when I say that you have  
4 given testimony -- and there's a document  
5 introduced into evidence that so indicates  
6 that, that you've given testimony as being  
7 highlighted on the viewer, criminal loss for  
8 each one of these accounts.

9 A It shows on that paper that there was a  
10 criminal loss created, yes.

11 Q And when that --

12 MR. SHIRLEY: We offer Exhibit K into  
13 evidence.

14 MR. SMITH: We don't have any  
15 objection to it, Your Honor. It's one of  
16 our documents.

17 THE COURT: It's admitted.

18 (Whereupon, Defendant Sunshine's  
19 Exhibit K was admitted into  
20 evidence.)

21 BY MR. SHIRLEY:

22 Q And so the transaction so far as you're  
23 concerned in the undirect -- I'm sorry, let me  
24 start over. That transaction that you talked  
25 about -- let me start over, I apologize. Tell

1 me who Mel Channell, Channell (pronouncing) is?

2 A To my knowledge he's a security officer with  
3 Union Planters Bank, now Regions.

4 Q Okay. And he did, in fact, get involved in  
5 this matter, did he not?

6 A Yes, he did.

7 Q And he got involved in this matter -- and I  
8 think this is page 108 of Exhibit 1.  
9 Defendant's Exhibit I, you see it's marked  
10 Exhibit I there below your thumb?

11 (Whereupon, Defendant Sunshine's  
12 Exhibit I was marked for  
13 identification.)

14 A Yes.

15 Q And that is a memo to you, is it not?

16 A That is correct.

17 Q And what I understand is that that is the  
18 reproduction of an e-mail; is that right?

19 A That's what it looks like, yes.

20 Q I mean, the -- Union Planters maintain things  
21 on a computer as opposed to having a paper  
22 file?

23 A I'm not sure how they do that.

24 Q Okay. But you know you got this memo, don't  
25 you?

1 A Yes, I do.

2 Q And it says in here the State of Alabama has an  
3 open criminal investigation and UP is opening  
4 one as well. It says that in there, doesn't  
5 it?

6 A Yes.

7 Q We do not want to jeopardize the criminal case,  
8 correct?

9 A Does say that.

10 Q And that concerns Robert McAllister, Dorothy  
11 Peters, and what else, the names that appear  
12 there on it?

13 A Yes. Hubert Lawson, Patricia Glazier, James R.  
14 Pote, and Nancy L. Coleman.

15 Q And at that point in time you did nothing, did  
16 you?

17 MR. SHIRLEY: We offer Defendant's  
18 Exhibit I.

19 A I think that document requested I send them  
20 information on those customers.

21 Q You did nothing to contact Comber Borland, did  
22 you?

23 A No.

24 Q And you did nothing to contact these other  
25 people, did you?

1 A No.

2 (Whereupon, Defendant Sunshine's  
3 Exhibit I was admitted into  
4 evidence.)

5 BY MR. SHIRLEY:

6 Q Now, the dealer agreement does not have the  
7 word "criminal" or "criminal loss" on it, does  
8 it?

9 A To my knowledge, no.

10 Q Okay. Now, the agreement -- let me start over  
11 again. That document, that agreement is called  
12 what?

13 A The dealer agreement?

14 Q Yeah. You referred to it as the dealer --

15 A Dealer agreement, yes.

16 Q So when I use the word "dealer agreement," you  
17 and I know what we're talking about?

18 A Yes.

19 Q We've seen it several times?

20 A Yes.

21 Q It's introduced into evidence, right? So it  
22 would be correct for me to say that you got  
23 Mr. Channell, who was authorized to decide if a  
24 criminal loss account should be set up, sends a  
25 memo out, and then the Lawson, the McAllister,

1           and the Peters gets a zero balance as a  
2           criminal loss?

3 A Not at that time I don't believe, no.

4 Q It wasn't done on the 11<sup>th</sup> of June?

5 | A I believe that's around that date that --

6	Q	Okay.
---	---	-------

7 A It shows criminal loss, but I'm not sure the  
8 document said that date on there, the e-mail.

9 Q Okay. When you say around that date, you mean  
10 it could have been the 12th or the 13<sup>th</sup>?

11 A Whatever the date said as the evidence was  
12 presented.

13 Q Okay. Whatever the document says on it? And  
14 this may clear it up. You see this has been  
15 produced to me. I marked it as Defendant's  
16 Exhibit L.

17 (Whereupon, Defendant Sunshine's  
18 Exhibit L was marked for  
19 identification.)

20 | BY MR. SHIRLEY:

21 Q And it is shown to be several pages of Hubert  
22 Lawson. And the last page, page -- actually  
23 pages 7, 8, and 9 are again reproduced  
24 computer --

25	A	Yes.
----	---	------

1 Q -- screens, aren't they?

2 A Yes.

3 Q And it shows it's done the 15<sup>th</sup>?

4 A June 15<sup>th</sup>, 2004.

5 Q And it says criminal loss Sunshine Camping.

6 A Yes, it does.

7 Q And what I'm trying to ask you, to be sure that  
8 I understand, the person that decided on behalf  
9 of Union Planters for it to be a criminal loss,  
10 zero balance in the account, sent the word  
11 down. And on or about the 15<sup>th</sup> of June it  
12 was done?

13 A I believe that to be correct, yes.

14 Q And I think if we look at Defendant's Exhibit  
15 Number 3, which I've marked as Defendant's  
16 Exhibit M --

17 (Whereupon, Defendant Sunshine's  
18 Exhibit M was marked for  
19 identification.)

20 BY MR. SHIRLEY:

21 Q This one is on Dorothy Peters?

22 A Yes.

23 Q And if you'll look at the last pages of that  
24 document and tell us at what the date was that  
25 it was assigned a criminal loss.



1 A Are you referring to page 11, not the last  
2 page?

3 Q I'm sorry?

4 A Are you referring to page 11 and not the last  
5 page?

6 Q I don't know, you'll have to tell me. If 11  
7 says it, that's what we need to know.

8 A Eleven says on effective date 6/11/04.

9 Q Okay. And then the other one has been produced  
10 on McAllister, and it says whatever it says,  
11 yes?

12 A Yes.

13 Q And it's gonna say something around June the  
14 11th or 12th or 13th or 14th --

15 A I believe that's --

16 Q -- or the 15th, just like these do.

17 MR. SHIRLEY: We offer Defendant's  
18 Exhibit --

19 MR. SMITH: May I see them? I  
20 haven't seen them in that form, I don't  
21 think.

22 MR. SHIRLEY: They're just like you  
23 gave them to me.

24 MR. SMITH: Okay. No objection to  
25 either of these, Your Honor.

1 THE COURT: All right. They'll be  
2 admitted.

3 MR. SMITH: That was all of 2-1.

4 MR. SHIRLEY: Let me say for the  
5 explanation, I'm not sure it's 2-1. I  
6 thought 2-1 was the first one I thought,  
7 and I thought that was the second one.

8 MR. SMITH: Off 2 and 3.

9 MR. SHIRLEY: Yeah.

10 MR. SMITH: All right. Thank you.  
11 Thank you.

12 (Whereupon, Defendant Sunshine's  
13 Exhibits L and M were admitted  
14 into evidence.)

15 BY MR. SHIRLEY:

16 Q Now, somebody other than you was supposed to  
17 put the language for the dealer agreement,  
18 right?

19 A That is correct.

20 Q But these guidelines -- which we offer into  
21 evidence Defendant's Exhibit N -- say what the  
22 policy and the guide is relative to completing  
23 that and putting the proper language in it,  
24 doesn't it?

25 A Yes.

(Whereupon, Defendant Sunshine's Exhibit N was marked for identification.)

BY MR. SHIRLEY:

Q The guides say that the following policies and procedures in an indirect loan approval business need to be followed, and they need to be specific, and they do have a particular purpose for being put in writing, do they not?

A I believe it says that, yes.

Q And so that would say to me that when it says that it should have -- the dealer should have a thorough understanding of the bank's acceptable credit criteria, that guide is saying Sunshine is supposed to know what the acceptable credit criteria is, right?

A That's what it says.

Q And somebody is supposed to tell Sunshine that on behalf of Union Planters, right?

A Yes.

Q But that's not in the indirect writing department, is it?

A (No response.)

Q Somebody else does that. Somebody else goes to the dealer, interacts with the dealer.

1 A Somebody other than me, yes.

2 Q That's what I was trying to establish. Someone  
3 else does that? And these guides say that they  
4 recommend that the bank take these titles and  
5 apply for them so they can make certain they  
6 get them, doesn't it?

7 A I believe it does state that.

8 Q But that wasn't done in a single one of these,  
9 was it?

10 A No.

11 Q And that's your decision, isn't it?

12 A That's not my decision.

13 Q Well, you were the one that approved the loans,  
14 all three of them, didn't you?

15 A Yes.

16 Q So it had to be you. Ain't nobody else that  
17 you can blame it on, is there?

18 A My superiors has authorized us to purchase  
19 contracts that way.

20 Q Well, then your superiors are at fault, not  
21 you? Is that what you're telling me?

22 A I'm ultimately responsible for each loan I  
23 make.

24 Q Okay. So you now agree that it was your  
25 responsibility?

1 A Yes.

2 Q And you wouldn't have ever done that if you  
3 hadn't have known Jon Williams so long, would  
4 you?

5 A Actually I didn't know Mr. Williams that long.

6 Q And you certainly didn't know anything about  
7 Sunshine, did you?

8 A No.

9 Q And recourse is no substitute for loan  
10 underwriting, is it? Isn't that what the guide  
11 says?

12 A That is correct.

13 Q Pardon?

14 A That's correct.

15 Q So on the firing line it's left up to you to  
16 decide whether or not to approve it, isn't it?

17 A That is correct.

18 Q And that dealer agreement says that we, Union  
19 Planters, reserve the right to approve this  
20 loan. It says that, doesn't it?

21 A Yes, it does.

22 Q That means on these three loans you, acting  
23 from Union Planters, right?

24 A Yes.

25 Q The bank should always do a complete credit

1           underwriting on the borrower. That's what your  
2           guides say, isn't it?

3       A       Yes.

4       Q       Page 153.

5                       MR. SHIRLEY: And we offer  
6           Defendant's Exhibit N into evidence.

7                       MR. SMITH: We have no objections to  
8           it, Your Honor.

9                       THE COURT: Admitted.

10                      MR. SMITH: Well we do object to the  
11           extent that it's highlighted.

12                      MR. SHIRLEY: Yes, sir, and I'll --

13                      MR. SMITH: And yours has got  
14           highlights all over it. We object to  
15           those highlights because those aren't on  
16           the original document.

17                      MR. SHIRLEY: Sure. And I'll be glad  
18           to just recopy and substitute them.

19                      THE COURT: All right.

20                      MR. SHIRLEY: Offer them into  
21           evidence when I get the copies.

22                      THE COURT: Do it without the  
23           highlighting.

24                      MR. SHIRLEY: I'll just leave it here  
25           until we get it.

(Whereupon, Defendant Sunshine's Exhibit N was admitted into evidence.)

BY MR. SHIRLEY:

Q I'll show you what has been identified to me, this is Sunshine Exhibit A.

(Whereupon, Defendant Sunshine's Exhibit A was marked for identification.)

BY MR. SHIRLEY:

Q And it appears that it's on page 12. It appears that Sunshine on the 13<sup>th</sup> of May told Union Planters that they were changing Commercial Bank, sent a check, right?

A That is what it looks like, yes.

Q Okay. Does this document come to your office?

A No, it does not.

Q Is it correct for me to believe that on the 13<sup>th</sup> day of May, 2003, you interpret this document, Defendant's Exhibit A, to indicate that Sunshine banking is changing banks?

A Yes.

Q And that from that point forward any money sent to them through a bank wiring should be sent to Commercial Bank?

1 A Yes, unless they changed that.

2 Q Okay. Well, do you have any documents that  
3 would indicate it's been changed?

4 A I believe there is document that says that.

5 Q Okay. Do you know that? Is that under your  
6 head? Are you the one that makes that  
7 decision?

8 A The question is?

9 Q Yeah, I'm sorry. I don't work at Union  
10 Planters, right? You understand that?

11 A Right, I understand.

12 Q And I don't know the choice of words to use to  
13 identify departments. But that document was  
14 something to do with changing banks and letting  
15 Union Planters know that?

16 A That is correct.

17 Q And what I don't understand is did that go to  
18 the accounting department or did it go to  
19 indirect writing?

20 A It went into our department, yes.

21 Q Okay. Well, then you don't have anything that  
22 says after May 13<sup>th</sup>, 2003, that the bank has  
23 changed, have you?

24 A Not to my knowledge at the present time.

25 Q Well, gosh, you haven't been looking at all



1           this junk before you showed up down here in  
2           Ozark?

3       A     I did not have all the exhibits, no.

4       Q     Well, where were they? I mean, that's a Union  
5           Planters document. I got that from your  
6           lawyer. How come you can't look at that and  
7           tell us?

8                       MR. SMITH: Your Honor, that's  
9                       argumentative.

10                      THE COURT: I sustain.

11       BY MR. SHIRLEY:

12       Q     You do know that I got that from your attorney?

13       A     I believe it to be correct, yes.

14       Q     You know I don't have a computer that's  
15           connected with Union Planters for it to be sent  
16           down here to me, you know that?

17       A     That's correct.

18       Q     And at this moment somebody that's supposed to  
19           know what they're doing, you can't produce me  
20           any document that says that was not the one  
21           that was supposed to be used, the bank?

22       A     I believe --

23                      MR. SMITH: Your Honor, that's an  
24                      argumentative question again and we object  
25                      to it.

1 THE COURT: I overrule that  
2 objection.

3 A I believe there's been evidence produced  
4 otherwise.

5 Q Well, I say a document. I'm asking you to tell  
6 me where the document is.

7 A I believe it's among some of this.

8 Q Now, are you talking about the document that  
9 was signed when they first went into business?

10 A No.

11 Q Okay.

12 A There's another document I believe that goes to  
13 CB&T for them to receive wire transfers, if I  
14 remember correctly.

15 Q All right. Well, let me see if I can find the  
16 one that -- it doesn't appear -- and I don't  
17 mean to -- yeah, here we go right here. Are  
18 you talking about this one, the CB&T? CB&T,  
19 and I'm looking at Exhibit 1, page 11.

20 A This is a document, yes.

21 Q That's what you're talking about?

22 A Uh-huh.

23 Q What's the date on there?

24 A 4/5/2003.

25 Q Well, that was before the May 13th?

1 A Okay.

2 Q So the May 13th would control, wouldn't it?

3 A To my knowledge it should, yes.

4 Q It should?

5 A Yes.

6 Q So they shouldn't have sent that money to CB&T.  
7 They should have sent that money wire  
8 transferred to Commercial Bank. Yes?

9 A Yes.

10 Q Thank you. Now, that means that look at you as  
11 an indirect writer looking at that  
12 documentation, there's no reason to believe  
13 that the acting president would believe money  
14 would still go into CB&T if he told y'all in  
15 Paducah, Kentucky, go to Commercial Bank.

16 MR. SMITH: Your Honor, we object as  
17 to speculation as to what somebody else  
18 believed.

19 THE COURT: I sustain.

20 BY MR. SHIRLEY:

21 Q Well, sir, do I understand correctly that the  
22 May 13<sup>th</sup>, 2003, request to change over to  
23 Commercial Bank in Ozark from CB&T in  
24 Enterprise, that's what it was done for so the  
25 new money would be transferred to Commercial

1 Bank?

2 A If I was in charge of that I would say that  
3 would be correct, yes.

4 Q In charge of it? That doesn't -- you said you  
5 got the document; that it came in --

6 A Unfortunately I'm not in charge of changing  
7 that.

8 Q Oh. You mean yet again somebody else that was  
9 your supervisor that was wrong and now it's  
10 some other department that did it wrong, huh?  
11 Yes?

12 A That could be true.

13 MR. SMITH: Your Honor, I object to  
14 Mr. Shirley continuing to argue with the  
15 witness, Your Honor.

16 THE COURT: I sustain that objection.  
17 Try to get facts.

18 BY MR. SHIRLEY:

19 Q Is it correct that you've never sent anything  
20 to Sunshine Camping that says that Regions Bank  
21 merged with Union Planters; is that right?

22 A I'm not sure.

23 Q Well, I'm just asking you. You haven't ever  
24 done it?

25 A Me personally, no.

1 Q Yes, sir. Well, you have been a -- you know,  
2 very informative telling us they merged. And  
3 you know all this business about how they take  
4 over; isn't that what you said?

5 A I know something about it, yes.

6 Q Well, where's the documentation that proves  
7 that?

8 A The letter that -- saying that we're merging  
9 with Regions?

10 Q That says they have a right to all this. I  
11 mean, you say you work for them now, and you  
12 done told this jury that Regions Bank is a  
13 successor. How do you know that?

14 A Well, unfortunately I've been through a prior  
15 merger, so I know a little bit about that.

16 Q Well, is that legal knowledge?

17 A It's not legal knowledge.

18 Q Okay. You're not saying you know legal  
19 knowledge?

20 A That's correct.

21 Q You're just saying if it's done like it --

22 A You didn't ask me legal knowledge.

23 Q If it's done like it used to be done or like  
24 it's supposed to be done, that's the way it is?

25 A When the banks merge, all rights are assigned

1 to the new bank.

2 Q And when the bank merged, your books and  
3 records said this was a zero balance, didn't  
4 it?

5 A No.

6 Q Criminal loss balance?

7 A That's what it says on those documents.

8 Q Yes, sir, and that's the documents that Regions  
9 Bank got when the merger occurred. There ain't  
10 no other documents, is there?

11 A That's not because of the merger.

12 Q Anything else is just internal computer  
13 business, isn't it? Yes?

14 MR. SMITH: Judge, again, I'm sorry.

15 A The question is?

16 MR. SMITH: I'm sorry. Mr. Shirley  
17 continues to argue with the witness, and  
18 we object to the form of his argumentative  
19 questions.

20 THE COURT: I overrule the objection.

21 BY MR. SHIRLEY:

22 Q Were you saying yes?

23 A And the question, please, again?

24 Q That Regions was a stranger to Union Planters,  
25 correct? They were not the same entity?

1 A No.

2 Q Okay.

3 A Not before the merger.

4 Q So before the merger the only document that  
5 existed was this document that said it was a  
6 zero balance and a criminal loss?

7 A Yes.

8 Q And that criminal loss was to write it off and  
9 get it off the books, wasn't it?

10 A No.

11 Q Well, is that because you're in the accounting  
12 department?

13 A No.

14 Q Okay. Then that's really just a guess, isn't  
15 it?

16 A No.

17 Q Okay. I guess you know?

18 A Yes.

19 Q Okay. Do you agree with me -- and forgive me  
20 if I asked you this, but I've got my notes and  
21 I try to follow my notes. And I apologize, I'm  
22 not trying to waste your time or the Court's or  
23 the jury's. You do agree with me that Union  
24 Planters drafted the dealer agreement and they  
25 decided how it would read, right?

1 A That's correct.

2 Q And you'd also agree that the last person in  
3 so -- well, strike that. The last entity, the  
4 last entity to have the authority over these  
5 loans was Union Planters; that was the entity?

6 A (No response.)

7 Q I mean, Regions Bank wasn't a part of Union  
8 Planters in June 2004, was it?

9 A It was not officially. The merger had been  
10 announced by that time.

11 Q Okay. Well, then, up until that day it was  
12 Union Planters and its employees who decided  
13 whether criminal prosecutions against Mr.  
14 Williams would occur, right?

15 A I believe that to be correct, yes.

16 Q And then when Regions Bank took over they  
17 decided whether there'd be criminal  
18 prosecutions, right?

19 A I can't answer that.

20 Q Well, you're down here on behalf of Regions,  
21 aren't you?

22 A Well, unfortunately I'm not the security  
23 officer.

24 Q And you were asked to give a deposition on  
25 behalf of Regions, weren't you?



1 A Yes.

2 Q Well, has it come to your attention that  
3 Regions has told Mr. Williams they're not gonna  
4 prosecute him criminally?

5 A That's never been told to me.

6 Q Have you ever investigated?

7 A No.

8 Q Why?

9 A I'm not a security officer of the bank.

10 Q Somebody else has got to do that, right; is  
11 that what you're saying?

12 A That would be correct, yes.

13 Q You would agree with me that the last entity to  
14 keep any of this from happening was Union  
15 Planters?

16 A Please rephrase the question. The entity?

17 Q No, sir. The last entity to have prevented  
18 this from happening, any of this loss, was  
19 Union Planters?

20 A Well, I can't believe that because Union  
21 Planters and Regions have merged, so they're  
22 the same entity.

23 Q Well, Regions didn't have anything to do with  
24 this when you approved these things.

25 A That's correct.

1 Q And Sunshine Camping company with a forgery,  
2 forged application didn't approve it, you  
3 approved it?

4 A Yes.

5 Q Don't you regret doing that?

6 A I do at this point in time, yes.

7 Q Sure. Now, you mean -- how many years you been  
8 in this banking business?

9 A Twenty-five years.

10 Q How many?

11 A Twenty-five years.

12 Q And you mean this guy fooled you?

13 A Yes, he did.

14 Q Oh, my gracious. How much financing and  
15 banking knowledge does this man over here have?

16 A I have no idea.

17 Q Okay. Well, let's assume he has none. Would  
18 you think he would be able to detect something  
19 that you couldn't detect?

20 A I would think not, no.

21 Q Huh?

22 A I would think not, no.

23 Q Okay. Well, I wanted to -- you do agree with  
24 me, don't you, that what Jon Williams did is  
25 stealing, don't you?

1 A Most definitely.

2 Q And it's stealing in Alabama and it's stealing  
3 in Kentucky, right?

4 A Yes, sir.

5 Q Okay. And you're not accusing Sunshine of  
6 stealing, are you?

7 A I believe our lawsuit's against Sunshine  
8 Camping Center and Jon Williams, so yes.

9 Q Yes, what?

10 A Yes, they stole.

11 Q Well, there is no one but Jon Williams that has  
12 ever come to your attention as knowing anything  
13 about this, right?

14 A I believe that to be correct yes, sir.

15 Q Right. And you remember me asking you if you  
16 had any basis in your deposition to suggest  
17 that you knew anything that would indicate that  
18 Comber Borland knew anything. You remember  
19 that?

20 A Yes.

21 Q And your answer was no?

22 A No.

23 Q And it is today, isn't it?

24 A Yes.

25 Q Now, it's just not good business to let

1           somebody run off and not bring the title in, is  
2           it?

3           A     That is a common nature of our business.  
4           Unfortunately customer would not be able to  
5           receive his unit if he had to wait for the  
6           title.

7           Q     Oh, so this Exhibit J to Jon Williams, Dale  
8           York, that says you contacted him March 3  
9           through December 3 -- you remember sending that  
10          out?

11          A     I did not send that out.

12          Q     You didn't send it out?

13          A     No.

14          Q     You just made a record of all those contacts?

15          A     Leigh Turner from Union Planters in my  
16          department sent this out.

17          Q     So she was able to tell from your computer that  
18          all these contacts had been made to find out  
19          where those titles were?

20          A     She's actually the one that makes the contacts.

21          Q     Okay. That's her job?

22          A     That's correct.

23          Q     And she just let him get away with it?

24                       MR. SMITH: Objection, argumentative,  
25                       Your Honor.

1 THE COURT: I sustain. I sustain.

2 BY MR. SHIRLEY:

3 Q Okay. So same thing is true with McAllister  
4 and Peters, isn't it? I'm sorry, I thought you  
5 looked at it. Wouldn't want to be accused of  
6 not letting you look at it.

7 A There's also a James Pote on here as well.

8 Q So somebody at Union Planters the entity knew  
9 that the procedures were not followed long long  
10 before Mr. Williams got in trouble with the law  
11 and it all came to surface where Mr. Channell  
12 was notified, right?

13 A Rephrase the question again.

14 Q Well, y'all knew that there was something  
15 smelly, didn't you? That these titles were not  
16 in?

17 A We knew we had four titles that were not in.

18 Q And that ain't good business, is it?

19 A Unfortunately you don't always get titles on  
20 time.

21 Q That's isn't what I asked you. Is that good  
22 business?

23 A I would say no.

24 Q No?

25 A No.

1 Q Thank you. Well, how did he keep these loans  
2 afloat all this time?

3 A I can't speculate to this.

4 Q But Mr. Channell said that you could look on  
5 the computer because the payments were scanned  
6 into the computer; is that right?

7 A That's what Mr. Channell said.

8 Q You don't believe that?

9 A I have no reason to doubt what he says.

10 Q I don't either and -- but you don't have  
11 anything to do with collections?

12 A That's right.

13 Q Who does?

14 A Collection department.

15 Q But they, the payment department, the payment  
16 department would have known if payments were  
17 being made by money orders from somebody that  
18 was different than the loan, wouldn't they?

19 A I can't testify as to what they would know.

20 Q Well, then you can't rule that out, can you?

21 A That's true.

22 Q So it all boils down to there was plenty of  
23 opportunity with Union Planters to stop this  
24 scheme. And there's so many people juggling  
25 the iron that y'all all couldn't get together

1 and decide what to do, right?

2 MR. SMITH: Object to argumentation,  
3 Judge.

4 THE COURT: I overrule.

5 A Rephrase the question or ask me the question  
6 again.

7 Q Okay. Well, you would forgive me if I can't  
8 say it just exactly like I said it, right?

9 A Right.

10 Q If I understand your testimony, what you're  
11 saying is there are three or four different  
12 departments that are involved in this?

13 A That is correct.

14 Q But they are all employees of Union?

15 A That is correct.

16 Q And the indirect lending department is to keep  
17 fraudulent loans from coming through, right?

18 A They try to do that, yes.

19 Q But you didn't do that this instance?

20 A On those instances, no.

21 Q And then the collection department, they're  
22 advised and trained and knowledgeable that if  
23 somebody is not sending the title in, the  
24 paperwork to give the bank the security, check  
25 into it, there is a polecat that's smelly;

1           that's what they're taught, isn't it?

2       A     Polecat? I'm not sure that's the wording I'd  
3           use.

4       Q     Well, let me say that's what they ought to use.  
5           It means quite well, doesn't it? You don't  
6           have any difficulty understanding what I say  
7           when I say it's a polecat, do you?

8       A     I guess, yes, I do.

9       Q     You do? Okay. Well, I imagine some of  
10          these --

11      A     I mean, this is a court of law, I mean.

12      Q     Some of these other city slickers around here  
13          probably don't know what that is. Well, let me  
14          apologize for using such a difficult term.  
15          It's not an acceptable way of doing business at  
16          Union Planters for somebody who's stolen money  
17          from you to pay back a loan with a money order,  
18          and the collection department is trained to be  
19          checking on that, right?

20      A     I'm not sure the collection department is  
21          trained to monitor every payment comes in.  
22          When an account comes past due, then they may  
23          have looked into it at that point in time.

24      Q     Okay. So, and --

25      A     That would be --



1 Q And this is not something that makes you proud,  
2 is it?

3 A No.

4 Q And that's because you know it isn't suppose to  
5 happen, right?

6 A Right. The dealer fulfills its obligation,  
7 that shouldn't happen.

8 Q Well, my gracious, sir, that's all Union  
9 Planters. It ain't got nothing to do with the  
10 dealer. That's all your internal stuff. Yes?

11 A That document is internal.

12 Q Yes, I noticed. You're not gonna say one thing  
13 bad about Union Planters, are you?

14 MR. SMITH: Your Honor, I --

15 THE COURT: I sustain the objection.  
16 And, Mr. Shirley, let's try to confine our  
17 questions and remarks to the facts of the  
18 case. Try to avoid being argumentative,  
19 please.

20 BY MR. SHIRLEY:

21 Q Do you know whether -- I can't remember, but I  
22 believe that that note said that the State of  
23 Alabama was involved with Agent Ward. Does  
24 that ring a bell with you?

25 A It rings a bell to me that maybe Mel Channell

1           mentioned the gentleman's name to me one point  
2           in time, the security officer.

3       Q     Right. You don't know him?

4       A     I don't know him, no.

5       Q     But you know that if Mr. Channell was inclined  
6           to he could have contacted Mr. Ward, the ABI  
7           agent, and asked him to start an active  
8           criminal prosecution?

9       A     I would assume so, yes.

10      Q     Now, do you think that you could stay hired if  
11           you stole money from Union Planters?

12      A     No.

13      Q     Do you think that that's part of your job, to  
14           steal money from Union Planters?

15      A     No.

16      Q     Do you think it's part of your job and that  
17           you're doing work in the scope of your  
18           employment to steal money from a third person?

19                   MR. SMITH: We object, that calls for  
20           a legal conclusion, Your Honor.

21                   THE COURT: I overrule the objection.  
22           You may answer the question.

23      A     The question again, please?

24      Q     Yes, sir. Do you think that you're working --  
25           let me start over just a minute. At one time

1           you were the vice president of Union Planters?

2       A       Yes.

3       Q       And now your title or position is identified by  
4           a position as opposed as an officer?

5       A       That is correct.

6       Q       And whether you're an employee for Regions or  
7           an officer from Union Planters, do you believe,  
8           sir, that you are in the scope of your  
9           employment and working at your job and doing  
10          your duties for Union Planters or Regions if  
11          you steal money from a third person?

12                   MR. SMITH: We object again, Your  
13                   Honor. Calls for a legal conclusion.

14                   THE COURT: I overrule.

15       A       That is not in the scope of my job.

16       Q       What reasons do you have to think that that was  
17           in the scope of Jon Williams's job?

18       A       He was the president of the company.

19       Q       Well, you heard testimony today that he wasn't.  
20           You're trying to tell me that if you're a  
21           president or a vice president, like the vice  
22           president of Union Planters, and you steal  
23           money that's part of your job?

24       A       That's not part of my job.

25       Q       Okay. Well, why is it part of Mr. Williams's

1           job in your mind?

2           A     He signed an agreement with Union Planters.

3           Q     I didn't say that, I'm asking about jobs.

4                     MR. SMITH: Your Honor, may he be  
5                     allowed to answer the question?

6                     THE COURT: Yes. Let's do that.

7           BY MR. SHIRLEY:

8           Q     Yes, sir, and don't tell me --

9                     MR. SMITH: Your Honor --

10          BY MR. SHIRLEY:

11          Q     -- what's in the agreement, that's not what I  
12                 asked.

13                     MR. SMITH: Your Honor, may he be  
14                     allowed to answer the question without Mr.  
15                     Shirley --

16                     MR. SHIRLEY: Well, yeah, if you will  
17                     just quit interrupting me, we'll press on.

18                     MR. SMITH: Your Honor, I'm not  
19                     trying to interrupt Mr. Shirley. I'm just  
20                     trying to make sure this jury gets a full  
21                     and fair presentation of the facts, not  
22                     some harangue from some lawyer.

23                     THE COURT: All right. If you'll  
24                     restate your question, please.

25                     MR. SHIRLEY: Yes.

1 BY MR. SHIRLEY:

2 Q I didn't ask anything about the agreement, did  
3 I, sir?

4 A No.

5 Q So we don't have to include in your answer the  
6 agreement, do we?

7 A I do not know that --

8 MR. SMITH: Your Honor --

9 THE COURT: I sustain the objection.

10 Ask your question, please.

11 BY MR. SHIRLEY:

12 Q Do you agree, sir, as a vice president of Union  
13 Planters that it was not in the scope of your  
14 employment or your duties to steal money from a  
15 third person?

16 A No, but I am not a corporate officer.

17 Q Pardon?

18 A I am not a corporate officer.

19 Q Not at Regions?

20 A Not at Regions.

21 Q But at Union Planters?

22 A I was not a corporate officer.

23 Q Okay. Thank you. And I appreciate you -- but  
24 it wouldn't matter, you were a vice  
25 president --

1 A That's correct.

2 Q -- in charge of the department. And the answer  
3 would be the same, wouldn't it?

4 A Yes, sir.

5 Q And I'm asking you what you know about Jon  
6 Williams. How can you say in your mind that  
7 that was within the scope of his employment,  
8 stealing money from Union Planters?

9 A I would say it's not in anybody's scope of  
10 employment.

11 Q I thought so, too, and I thank you for that  
12 answer. Would you agree with me that the real  
13 success of an indirect writing credit approving  
14 company is primarily contingent upon good  
15 underwriting, good policy and procedure of  
16 underwriting?

17 A Yes.

18 Q And that's the backbone of it, right?

19 A That is the backbone.

20 Q Do you have any reason to believe -- never  
21 mind, I won't ask that. Just one moment. Need  
22 just a moment to make certain I haven't omitted  
23 introducing an exhibit through this witness.  
24 That's all I have, thank you.

25 THE COURT: All right. Mr. Matthews?

CROSS-EXAMINATION

BY MR. MATTHEWS:

Q Mr. York, have you ever met Mr. Williams?

A Just -- I met him yesterday or saw him  
yesterday.

Q So in the past few years you didn't know who he  
was?

A No.

Q Did you know who Mr. Borland was?

A I did know who Mr. Borland was. We had a  
deposition scheduled on the same day back in  
May of last year.

Q So you didn't know him before when all this was  
going on?

A Not personally.

Q All right.

THE COURT: Redirect?

MR. SMITH: Yes.

REDIRECT EXAMINATION

BY MR. SMITH:

Q Mr. York, had you accepted contracts that Mr.  
Williams had assigned before?

A Yes, we did.

Q When he was at prior company?

A Yes.

1 Q Any problems with any of those?

2 A No.

3 Q Is there anything that led you to believe  
4 before, I think it was sometime in June of  
5 2004, that there was any problem with any of  
6 these contracts that Mr. Williams was sending  
7 to be assigned?

8 A No.

9 Q Was there anything on the face of the  
10 contracts, anything written on them --

11 A No.

12 Q -- that indicated there was any problem?

13 A No.

14 Q They were regular on their face, weren't they?

15 A Yes.

16 Q Do you know anything about how Mr. Williams may  
17 have made payments on these contracts?

18 A I do not know.

19 Q Whether it was by money order or anything else?

20 A No, I do not.

21 Q In fact, there hasn't been any testimony in  
22 this courtroom as to how he made any of those  
23 payments, has there been?

24 A Not that I've heard.

25 Q Now, if you stole money from Regions or Union



1           Planters, would they let you keep on working  
2           for them?

3       A     Most definitely not.

4       Q     And you've heard testimony in this case. Let  
5           me ask you this. If you paid out money without  
6           authorization, if you wrote checks to yourself  
7           without authorization like Mr. Williams did  
8           sometime in before August of 2002, would they  
9           let you keep working?

10      A     No, they would not.

11      Q     Would they let you continue to write contracts?

12      A     No, they would not.

13      Q     Now, was it part, as far as you know, of Mr.  
14           Williams's job with Sunshine to assign  
15           contracts?

16      A     Yes.

17      Q     That's what the authorization said, wasn't it?

18      A     Yes, it was.

19      Q     And you never received and the bank never  
20           received anything that said otherwise; would  
21           that be true?

22      A     That's correct.

23      Q     Did the bank pay \$18,260.50 to Sunshine Camping  
24           Center on the first Lawson contract?

25      A     Yes.

1 Q And then \$1,092.99 as a finders fee on the  
2 first Lawson contract?

3 A Yes.

4 Q On the second Lawson contract did the bank pay  
5 Sunshine \$8,516.06?

6 A Yes, it did.

7 Q Did it pay a finders fee of \$1,430.03?

8 A I believe that says \$1,340.03.

9 Q Thank you, Mr. York, you're absolutely right.  
10 Was that paid to Sunshine?

11 A Yes, it was.

12 Q Did it pay off this note from the first Lawson  
13 loan 18,284.56 because of those documents?

14 A Yes.

15 Q On the Peters, did the bank pay Sunshine  
16 \$45,171.50?

17 A Yes.

18 Q Did the bank pay a finders fee of \$2,710.29?

19 A Yes.

20 Q Exhibit 1, page 92, if you'll look at that.

21 (Whereupon, Plaintiff's Exhibit  
22 Number 1, page 92, was marked  
23 for identification.)

24 A I have that.

25 Q You recognize that?

1 A Yes, data entry form.

2 Q Does that reflect the monies paid on the  
3 McAllister loan?

4 A Yes, it does.

5 MR. SMITH: Your Honor, we'd offer  
6 page 92 of Exhibit 1.

7 THE COURT: Admitted.

8 (Whereupon, Plaintiff's Exhibit  
9 Number 1, page 92, was admitted  
10 into evidence.)

11 BY MR. SMITH:

12 Q Did the bank pay Sunshine \$19,000 on that  
13 McAllister loan?

14 A Yes, it did.

15 Q Did the bank pay Sunshine \$1,140 as a finders  
16 fee on that loan?

17 A Yes.

18 Q Has the bank gotten other than a small amount  
19 of that money back?

20 A No.

21 Q Has the bank asked Sunshine to pay it back?

22 A Yes, we have.

23 Q Under the terms of the dealer agreement, says  
24 the dealer will at all times hereafter -- you  
25 see that?

1 A Yes.

2 Q Meaning from the date of the agreement forward?

3 A Yes.

4 Q At all times hereafter indemnify and hold  
5 harmless the bank against any and all. That's  
6 what it says, any and all, doesn't it?

7 A Yes.

8 Q Liabilities, loans, damage, costs, and  
9 expenses, correct?

10 A Yes.

11 Q Of whatever kind or nature, doesn't it?

12 A Yes, it does.

13 Q Including reasonable attorneys fees?

14 A Yes.

15 Q And it not only said that on the dealer  
16 agreement, it said it on the back of the  
17 contracts that were assigned, didn't it?

18 A I believe that's correct, yes.

19 Q I'm gonna show you that assignment by seller  
20 once again. Under paragraph J: If any -- it  
21 says any, doesn't it?

22 A Yes, it does.

23 Q Of these warranties is breached or untrue,  
24 seller will upon assignee's demand purchase  
25 this contract from assignee; is that correct?

1 A That is correct.

2 Q And you called on these folks at Sunshine to do  
3 it, didn't you?

4 A Yes, I did.

5 Q Did they do that?

6 A No, they did not.

7 Q And when these monies were paid to Sunshine,  
8 this Exhibit J, this Exhibit J, Union Planters  
9 was trying to find out why the titles hadn't  
10 been submitted; is that correct?

11 A That is correct.

12 Q And you were getting the runaround from  
13 Sunshine, weren't you?

14 A Yes, we were.

15 Q But that was going on after the monies had been  
16 paid?

17 A That is correct.

18 MR. SMITH: I think that's all I  
19 have, Your Honor.

20 THE COURT: All right.

21 MR. SHIRLEY: I don't have anything  
22 else, thank you.

23 MR. MATTHEWS: No, sir.

24 THE COURT: All right. Thank you,  
25 sir, you may step down.

1 MR. KNIGHT: Call Agent J.R. Ward of  
2 the Alabama Bureau of Investigation,  
3 please. He's outside.

4 MR. SMITH: I'll get him.

5 JIMMY R. WARD

6 having been first duly sworn or affirmed, was  
7 examined and testified as follows, to-wit:

8 DIRECT EXAMINATION

9 BY MR. KNIGHT:

10 Q You ready?

11 A Yes, sir.

12 Q Please state your name.

13 A I am Jimmy R. Ward, II, also known as J.R.  
14 Ward.

15 Q I can refer to you as Agent Ward?

16 A That's correct.

17 Q And what do you do for a living?

18 A I work with the Alabama Department of Public  
19 Safety Alabama Bureau of Investigation as a  
20 major crimes investigator.

21 Q Okay. And just explain what a major crimes  
22 investigator does.

23 A Major crimes investigations involve murders,  
24 embezzlements, theft rings, theft of property  
25 cases, and a lot -- we're an assisting agency

1 to other police departments. When they call us  
2 in, normally they don't have the assets  
3 available to work an appropriate type of case;  
4 and therefore we do the investigation. Either  
5 they assist us or we assist them.

6 Q How long have you been with the ABI?

7 A I've been with ABI for approximately  
8 three-and-a-half years now.

9 Q You were there in 2003 or 2004; is that  
10 correct?

11 A Yes, sir, that's correct.

12 Q Are you familiar with the business by the name  
13 of Sunshine Camping Center?

14 A Yes, sir, I am.

15 Q Tell us how you know that business.

16 A I first became familiar with Sunshine Camping  
17 Center -- let me refer to a particular month,  
18 sir. January of 2004. I was contacted by  
19 Level Plains Chief of Police by the name of  
20 Kenny Jackson. Chief Jackson contacted me and  
21 advised me that he had a case that had been  
22 reported to him that was well over his head and  
23 he was gonna need assistance on it. And when I  
24 responded to meet with Chief Jackson, he  
25 produced documents that were given to him

1 prior. And at that time I became familiar with  
2 Sunshine Camping Center.

3 Q Now, as part of your investigation did you have  
4 occasion to meet Mr. Comber Borland?

5 A Yes, sir, I did.

6 Q Do you recognize Mr. Borland?

7 A Yes, sir, I do.

8 Q Is that him in the pink shirt?

9 A In the pink shirt, yes, sir.

10 Q Okay. When you met with him what did you  
11 understand him to be -- who did you understand  
12 him to be?

13 A He was the owner and operator of Sunshine  
14 Camping Center.

15 Q Okay. How many times would you say you met  
16 with Mr. Borland?

17 A I met with Mr. Borland numerous times.  
18 Personally, I would have to say maybe a half a  
19 dozen times; by phone conversation, a lots more  
20 than that. Maybe as many as a couple dozen  
21 times. That's just an estimate, but it was a  
22 lot.

23 Q Okay. Tell me about your first meeting that  
24 you remember having with Mr. Borland.

25 A It was the same day that I met with Chief



1 Jackson. Once I got this information he  
2 basically went through just minor parts of what  
3 was going on. I really didn't have a real big  
4 picture of what was going on from what he had  
5 explained to me. So at that point in time when  
6 I left Chief Jackson from his police  
7 department, which was probably less than a  
8 mile, to go to Sunshine Camping Center, I went  
9 ahead and responded to Sunshine Camping Center.

10 I walked in through the front door.  
11 Someone there greeted me and I asked to speak  
12 to Mr. Borland. And Mr. Borland eventually  
13 came in. It wasn't very long that I was there  
14 waiting. He came in and introduced himself. I  
15 introduced myself. And at that time I began  
16 speaking with him.

17 Q Tell me about what went on in this first  
18 conversation.

19 A The first conversation I advised Mr. Borland  
20 who I worked for and I was here to start  
21 investigating a case that involved Sunshine  
22 Camping Center and some possible forgeries and  
23 thefts that were happening. Mr. Borland  
24 seemed -- I don't understand what you're  
25 talking about. You know, he was a little bit

1           standoffish on what I was coming to him with.  
2           It was like, I have no knowledge of what you're  
3           asking me and what --

4       Q     Was it fair to say it was more than  
5           standoffish? He denied knowing anything about  
6           it?

7       A     Yes, sir. He says -- you know, I hadn't gotten  
8           direct to the points, but I was giving certain  
9           things that I was there for. And it was like  
10          he did not want any contact with ABI, you know.  
11          And then I --

12       Q     You told him the points that you were there --

13       A     I told him, I said: Mr. Borland, I said, Its  
14          time -- you need to talk to me. At this point  
15          in time I don't know what's going on. All I  
16          know is I've got a stack of documents that were  
17          given to me by Chief Kenny Jackson. He's  
18          requested that I be here and, I said, And  
19          that's why I'm here.

20       Q     But he denied knowing anything about these  
21          documents they had given to Chief Jackson?

22       A     Now, that's when he opened up.

23       Q     Okay. But prior to that --

24       A     Once I produced these documents and showed him  
25          the documents and advised him that I was

1 requested by chief Kenny Jackson, then he  
2 opened up and able to sit down with me.

3 Q But he didn't want to talk to you until he saw  
4 you had the documents?

5 A That's correct.

6 Q Just generally tell us what Mr. Borland  
7 disclosed to you in your investigation.

8 A There was a lot of things that Mr. Borland  
9 disclosed to me. Of course, I had questions  
10 about particular type forms, how these forms  
11 were used, what these forms were used for, the  
12 banking account, the numbers, several things  
13 like that, you know, just minor things.

14 But as I'm learning more about his  
15 relationship with Jon Kelly Williams, Mr.  
16 Borland explains to me that when he first began  
17 his business he and Mr. Williams were 50/50  
18 partners in the business in Sunshine Camping.  
19 And as the relationship, the work relationship  
20 grew, Mr. Borland discovered that Mr. Williams  
21 was using the business funds to pay for  
22 personal expenses. And therefore he approached  
23 Mr. Williams with the fact or with the threat  
24 of criminal prosecution regarding embezzlements  
25 from the business. At that point in time Mr.

1           Borland explained to me that Mr. Williams  
2           agreed to give a certain percentage of his  
3           business, of his 50 percent, to Mr. Borland to  
4           avoid criminal prosecution. And this continued  
5           on. Their working relationship continued on.  
6           Mr. --

7           Q     Let me stop you.

8                         MR. SMITH: Hold it. I'm sorry.

9           BY MR. KNIGHT:

10          Q     Let me stop you there. He told you, if I  
11                understand you correctly, that he was gonna  
12                give him a certain percentage of his business  
13                to avoid criminal prosecution; is that what you  
14                said?

15          A     Yes, sir.

16          Q     Is that the only reason he offered for becoming  
17                the -- or for getting this percentage of the  
18                business?

19          A     Yes, sir, that's the only thing that I can  
20                recall.

21          Q     Okay. He didn't tell you that he was getting  
22                this percentage of the business because his  
23                relatives were putting capital into the  
24                company?

25          A     No, sir.

1 Q Did he mention a word of that?

2 A No, sir.

3 Q So the only reason that he offered was that he  
4 had caught Mr. Williams embezzling from the  
5 company?

6 A That is correct.

7 Q Did he mention anything about the promissory  
8 note --

9 A No, sir.

10 Q -- being executed for Mr. Williams in favor of  
11 Comber Borland at this time?

12 A No, sir.

13 Q Not a word about that?

14 A No, sir.

15 Q Now, I'm sorry to interrupt. Continue on after  
16 this --

17 A As their business relationship continued, and I  
18 don't know the timeframe from the time this  
19 portion of the business was given until the  
20 next time something arose, Mr. Borland says he  
21 had another incident which involved a possible  
22 criminal situation and therefore he ended up  
23 obtaining 100 percent control of Sunshine  
24 Camping Center.

25 Q Let me interrupt again. He didn't terminate

1 his employment after this --

2 A No, sir, he did not.

3 Q -- after he first discovered these first -- he  
4 just got a certain percentage of the company,  
5 correct?

6 A Yes, sir.

7 Q So I understand he said Jon Williams continued  
8 on in his employment with Sunshine, correct?

9 A Yes, sir.

10 Q And then there's a second incident where he  
11 discovered acts of embezzlement; is that  
12 correct?

13 A Yes, sir.

14 Q And what happened within the company as a  
15 result of that?

16 A One hundred percent ownership was transferred  
17 to Wallace Comber Borland.

18 Q Okay. And he told you that that was because of  
19 he had discovered additional acts of  
20 embezzlement?

21 A Yes, sir.

22 Q And it was a hundred percent ownership?

23 A Yes, sir.

24 Q What happened after this? I mean, obviously  
25 didn't fire him?

1 A No, sir. He allowed Mr. Williams to stay on as  
2 just a salesman for Sunshine Camping Center.

3 Q He said just a salesman?

4 A As a salesman on commission basis.

5 Q Did he say that he had authority to do  
6 financing contracts?

7 A No, sir. He -- of course, that was brought up  
8 when I discovered some checks that were written  
9 and -- by Jon Kelly Williams. And he says that  
10 he has absolutely no authorization or no  
11 control over the banking accounts or the  
12 financial aspect of Sunshine Camping Center.

13 Q Okay. Tell me what happened after that.

14 A He allowed him to remain on as a salesman on  
15 commission-type basis. And again, I'm not sure  
16 the timeframe that went on from that time until  
17 the time he discovered that Mr. Williams had  
18 written a \$27,000 check on Sunshine Camping  
19 Center from the Sunshine Camping Center  
20 account. He had given that check to Phillip  
21 Jones. Mr. Jones approached Mr. Borland  
22 wanting reimbursement for that \$27,000 because  
23 the check bounced on nonsufficient funds. And  
24 Mr. Borland at that time said he became aware  
25 that Mr. Williams had written a check and at

1           that point in time he fired him from the  
2           business.

3       Q     Okay. After this did you ever have anymore  
4           contact with Mr. Borland?

5       A     Yes, sir. You know, like I said, we spoke on,  
6           you know, a couple dozen times, either by phone  
7           or by person. I maybe met with him a half  
8           dozen times at his business and maybe a couple  
9           of dozen times on the telephone by him  
10          returning my call or me returning his call.

11       Q     What would -- he'd call you up, though --

12       A     There was a lot of --

13       Q     -- is that correct?

14       A     There was a lot of civil questions that Mr.  
15          Borland was bringing forth to me. He was  
16          concerned about Union Planters Bank and them  
17          fixing to shut him down from sending loans to  
18          them. And there was a lot of stuff, and I just  
19          plain out told him, I said, Mr. Borland, you  
20          need to go get you a lawyer. There's no way I  
21          can answer these questions for you. Those are  
22          civil questions. I'm a criminal investigator.  
23          I'm not trained or authorized by law to give  
24          you civil advice. And that was repeated. That  
25          was several times that I advised him of this,



1 and eventually his calls ceased and never heard  
2 from him anymore.

3 Q Thank you, Agent Ward. That's all I have.

4 A Yes, sir.

5 MR. SHIRLEY: It's okay?

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. SHIRLEY:

9 Q Your criminal investigation was Jon Kelly  
10 Williams?

11 A Yes, sir.

12 Q And that's all it's ever been?

13 A Yes, sir.

14 Q And the \$27,000 check, did you ever see that?

15 A Yes, sir, I did.

16 Q And did you satisfy yourself it was a forgery?

17 A Yes, sir, I was.

18 Q Okay. And do you know what this lawsuit is  
19 about?

20 A No, sir, not really. I just know bits and  
21 pieces. I had several criminal investigations,  
22 and I'm not exactly sure which one this is  
23 about.

24 Q Well, based upon your testimony so far, you  
25 have not mentioned that you've done any kind of

1 criminal investigation about Lawson -- Hubert  
2 Lawson, McAllister, or Peters; is that right?

3 A They -- portions of theirs was investigated,  
4 yes. And I never had a case file that involved  
5 them directly.

6 Q And so you have not actively pursued a criminal  
7 investigation against those three?

8 A Against those, no, sir.

9 Q Right. But even those three concerned Jon  
10 Williams, didn't they?

11 A Yes, sir, that's correct.

12 Q Okay. Thank you.

13 THE COURT: Mr. Matthews?

14 MR. MATTHEWS: No questions.

15 THE COURT: Thank you, sir.

16 THE WITNESS: Can I be excused?

17 THE COURT: Yes, sir. Thank you for  
18 being with us today.

19 THE WITNESS: Yes, sir.

20 MR. SMITH: Your Honor, may we  
21 approach?

22 THE COURT: Yes, sir.

23 (Whereupon, counsel conferred at  
24 the Bench out of the hearing of  
25 the jury.)

1 MR. SMITH: I'm pleased to do  
2 whatever the Court wishes for us to do,  
3 but Comber Borland will be our next  
4 witness.

5 THE COURT: Okay. I think we better  
6 adjourn for the day and come back in the  
7 morning. We'll come back at 8:30 again.

8 MR. SHIRLEY: That's fine.

9 (The following was heard in open  
10 court.)

11 THE COURT: Ladies and gentlemen,  
12 we'll take the evening recess at this  
13 time. I'm going to excuse you to be back  
14 in the jury room again in the morning at  
15 8:30, and we'll try to get started  
16 promptly at that time. So we'll let the  
17 jurors go out first.

18 (The jury left the courtroom.)

19 THE COURT: Let me ask you about jury  
20 charges. It's usually helpful for me to  
21 have those a little in advance for review.  
22 So if you have them prepared I'll let you  
23 file them at this time. And of course we  
24 can make any adjustments or additions or  
25 deletions from them when we have our

1 charge conference.

2 MR. SHIRLEY: This is off the record.

3 (Discussion off the record.)

4 MR. SHIRLEY: Judge, for the record  
5 we offer Exhibit A.

6 MR. SMITH: Which one is that?

7 THE COURT: All right.

8 MR. SMITH: Okay. We're good. We're  
9 okay.

10 MR. SHIRLEY: Now, can you wait till  
11 I go copy that?

12 (Whereupon, Defendant Sunshine's  
13 Exhibit A was admitted into  
14 evidence.)

15 (Break in the proceedings.)

16 (The following was heard on  
17 May 3, 2006.)

18 THE COURT: Any matters we need to a  
19 address before we bring the jury in this  
20 morning?

21 MR. SMITH: Not from Regions, Your  
22 Honor.

23 MR. MATTHEWS: No, sir.

24 THE COURT: I will announce that the  
25 Court has reached a decision regarding the

1 motion to exclude the evidence on the  
2 attorneys fees. And based upon Mr. York's  
3 testimony on cross-examination that he  
4 lacked the knowledge and experience to  
5 determine the reasonableness of the fee  
6 and the Court's inability to find any  
7 authority to allow a lay opinion to  
8 otherwise testify or support attorneys  
9 fees, I'm gonna grant that motion to  
10 exclude.

11 (Whereupon, Plaintiff's Exhibit  
12 Number 15 was withdrawn from  
13 evidence.)

14 MR. SMITH: Then, Your Honor, I would  
15 say this. I would offer myself as a  
16 witness to testify as to the  
17 reasonableness of the fees and the  
18 necessity of the charges in and about the  
19 prosecution of this case.

20 MR. SHIRLEY: I will object. I  
21 prepared discovery requests about experts  
22 and any reports or documentation that was  
23 to be produced or introduced from any  
24 expert. And if he's offering himself as  
25 an expert witness and going to introduce

1 the documentation and the exhibits there,  
2 it's never been produced to me and I've  
3 not had an opportunity to review it or  
4 inspect it.

5 THE COURT: I'm gonna overrule that  
6 objection.

7 MR. SHIRLEY: We respectfully except,  
8 Your Honor.

9 THE COURT: All right. If there's  
10 nothing else we'll bring the jury in and  
11 continue.

12 (The jury entered the  
13 courtroom.)

14 THE COURT: Good morning, ladies and  
15 gentlemen.

16 JURORS: Good morning.

17 THE COURT: I trust everyone got a  
18 good night's rest and are ready to go this  
19 morning. We'll be continuing with the  
20 plaintiff's case, and Mr. Borland has been  
21 called as a witness. If you'll raise your  
22 right hand and be sworn.

23 COMBER BORLAND

24 having been first duly sworn or affirmed, was  
25 examined and testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. SMITH:

Q May it please the Court, ladies and gentlemen.  
You are Wallace Comber Borland, III?

A Yes.

Q You're also known as Comber Borland?

A Yes, sir.

Q And you are president of Sunshine Camping  
Center, Incorporated?

A Yes.

Q And you have been president since I believe  
April of 2003; would that be correct?

A I think that is correct.

Q Okay. If the documents that Mr. Pittman, your  
lawyer who incorporated the business, gave to  
us reflect that, you wouldn't argue with me,  
would you?

A No, sir.

Q I didn't think so. You were initially the vice  
president of the corporation; is that right?

A That's right.

Q And you and Mr. Jon Williams founded this  
company back in the fall, I think  
November-December thereabouts of 2001; is that  
correct?

1 A That's correct.

2 Q Now, you heard Agent Ward of the ABI testify  
3 yesterday, did you not?

4 A Yes, I did.

5 Q And do you recall his testimony about coming to  
6 see you in January or so of 2004?

7 A Yes, sir.

8 Q Do you remember your meeting with him at that  
9 time?

10 A Yes, sir.

11 Q And do you remember when Agent Ward first  
12 approached you, you were hesitant to talk with  
13 him?

14 A Yes.

15 Q You told him that you didn't know what he was  
16 talking about, didn't you?

17 A At that time he had not supplied information  
18 enough for me to know what he was talking  
19 about.

20 Q Well, he told you he was there asking about  
21 some fraud that had happened, didn't he?

22 A Yes, but I didn't know what fraud.

23 Q About some contracts that weren't valid, didn't  
24 he?

25 A But I didn't know what contracts.



1 Q Well, wait, now, that was January 2004, wasn't  
2 it?

3 A Yes.

4 Q You had already fired Jon Williams, hadn't you?

5 A Yes.

6 Q And he told you he was there asking about  
7 contracts that were fraudulent, and you told  
8 him you didn't know what he was talking about?

9 A I didn't.

10 Q Isn't it true you had already been to see Chief  
11 Jackson of the Level Plains Police Department?

12 A He came to see me, yes.

13 Q And you gave him some documents, didn't you?

14 A I gave him stuff that was in a briefcase, yes.  
15 I did not know what it consisted of.

16 Q And you knew that there was some problems with  
17 some contracts with the bank, didn't you?

18 A At what time, sir?

19 Q Well, when the man from the ABI came to see  
20 you.

21 A No, sir.

22 Q Well --

23 A I don't think so.

24 Q Okay. And then he told you he was there about  
25 some false contracts; is that right?

1 A He told me a number of things, sir. I don't  
2 remember exactly everything he said.

3 Q And then you talked with him, didn't you?

4 A Yes, I did.

5 Q Talked with him on a number of occasions,  
6 didn't you?

7 A Yes, sir.

8 Q And you told him, didn't you, that you found  
9 out that Mr. Williams had taken some money from  
10 you? You told him that, didn't you?

11 A I think he heard that wrong -- depends on  
12 what --

13 Q No, sir --

14 MR. SHIRLEY: Let him finish his  
15 answer.

16 A Depends on all what you're saying and  
17 everything. Did I know that Jon was taking  
18 money? I mean --

19 Q My question, Mr. Borland, was very simple. You  
20 told him that you found out Mr. Williams was  
21 taking some money?

22 A Yes.

23 Q And you told him that when you found out Mr.  
24 Williams was taking some money, you took away  
25 the presidency of the corporation from Mr.

1 Williams, didn't you?

2 A No, sir.

3 Q You didn't tell him that?

4 A No, sir.

5 Q You heard Mr. Ward say that, didn't you?

6 A Yes.

7 Q Are you telling us that Mr. Ward wasn't telling  
8 this jury the truth?

9 A No, I'm saying he heard me wrong.

10 Q He heard you wrong.

11 A I'm not calling the man -- saying he said  
12 anything wrong.

13 Q Now, Mr. Ward is a sworn law enforcement  
14 officer in this state, isn't he?

15 A That's correct.

16 Q He doesn't have a dog in this fight between  
17 Sunshine and my client the bank, does he?

18 A Not that I know about.

19 Q He doesn't have any reason or motive to come up  
20 here and tell this jury something that didn't  
21 happen, did he?

22 A I just said he heard it wrong.

23 Q No, sir. He doesn't have any reason or motive  
24 to tell this jury something that didn't happen,  
25 does he, as far as you know?

1 A I don't know. I don't have that ability to  
2 find out what he does or does not have.

3 Q So you're saying that what he told this jury  
4 yesterday when he said that you told him that  
5 you found out Mr. Williams had been taking  
6 money from you and you removed him from being  
7 president, that just wasn't what happened?

8 A That's not what happened.

9 Q So he's wrong? Mr. Williams --

10 A He heard me wrong.

11 Q He heard you wrong?

12 A That's not what I meant.

13 Q All right. Now, didn't you tell him also that  
14 you let Mr. Williams stay on writing, financing  
15 contracts after you found out Mr. Williams had  
16 been stealing from your business?

17 A He wasn't -- depends on what you call stealing.  
18 I mean, you know, I knew that he used the  
19 credit card, check card to get gas for his car  
20 every now and then. That's what I was talking  
21 about.

22 Q Sir, I'm sorry.

23 A Did I know he was stealing thousands of  
24 dollars? What are you asking me?

25 Q Sir, I'm sorry. You heard Mr. Williams testify

1 too, yesterday, didn't you?

2 A Yes.

3 Q And Mr. Williams said that he had been taking  
4 money from your company, correct?

5 A That's what he said.

6 Q To pay his personal bills, correct?

7 A That's what he said. I don't remember exactly  
8 what he said.

9 Q And that's just what you told the trooper or --  
10 excuse me, Mr. Ward, Agent Ward. That's what  
11 you told him, wasn't it?

12 A I told you what I told Mr. Ward already.

13 Q All right, sir. Now, you had an account with  
14 CB&T in Enterprise, didn't you, your company  
15 did?

16 A The company did.

17 Q And you -- when that account was first opened,  
18 both you and Mr. Williams were the people that  
19 had signatory authority on that account. You  
20 could both write checks, correct?

21 A That's correct.

22 Q And Mr. Williams used that account to write  
23 checks for his personal expenses, didn't he?

24 A (No response.)

25 Q Didn't he?

1 A When? At what timeframe?

2 Q Well, before August 5<sup>th</sup> of 2002.

3 A While he was still president?

4 Q Yes, sir, that's right.

5 A Yes.

6 Q He did that, didn't he?

7 A Yes.

8 Q And you found out about it, didn't you?

9 A I knew it.

10 Q You knew it and you didn't like it, did you?

11 A I did the same thing. I mean, it depends on

12 what amounts you're talking about. Ten dollars

13 for gas, yes, I knew he had done stuff like

14 that.

15 Q Well, he took \$15,000 from the business, didn't

16 he?

17 A No, sir, he did not.

18 Q So when he got up here yesterday and said he

19 took \$15,000 from the business --

20 A I don't think that's what he said.

21 Q I'm sorry. When he got up here yesterday and

22 said he took \$15,000 from the business, that

23 just wasn't true?

24 A He didn't say that I don't think, sir. Can you

25 show me that?

1 Q Well, sir, you entered into an agreement with  
2 him where he surrendered his presidency of the  
3 business; is that right?

4 A That is correct.

5 Q He gave you five shares of stock of the  
6 business, didn't he?

7 A That is correct.

8 Q Because originally you had 250 shares and he  
9 had 250 shares, right?

10 A That is correct.

11 Q And it was a 50/50 split?

12 A Yes.

13 Q And then in August of 2002 you got control of  
14 it, didn't you?

15 A Yes.

16 Q You took him off the CB&T account, didn't you?

17 A Yes.

18 Q And you did that because you found out he was  
19 taking money from the business, didn't you?

20 A No, sir. I did that because my sister was  
21 employed to take care of the books.

22 Q Didn't --

23 A And she's the one doing the deposits.

24 Q You didn't take yourself off, did you?

25 A Of course not.

1 Q But you took Mr. Williams off?

2 A He wasn't an officer. Depending on what  
3 timeframe you're talking about.

4 Q Wait, now. He was an officer on August 5<sup>th</sup>,  
5 2002, wasn't he?

6 A Yes, sir.

7 Q And he wasn't removed as president till three  
8 weeks later, right?

9 A Okay. Well.

10 Q That's what the documents show.

11 A That's what the documents show, yes.

12 Q Okay.

13 A It takes time to do things, I'm sorry.

14 Q So you're telling this jury that what Mr.  
15 Williams said about what happened and what  
16 Mr. Ward said about what you told him isn't the  
17 way things went down; is that right?

18 A About what situation, sir?

19 Q About the \$15,000.

20 A I don't believe Mr. Ward said anything about  
21 the \$15,000.

22 Q Well, Mr. Ward said -- Mr. Ward did -- not to  
23 argue with you, sir. Mr. Ward did tell us  
24 yesterday, though, that you removed Mr.  
25 Williams as president when you found out he had



1           been taking money from the company; isn't that  
2           right? That's what he said?

3       A     That's what he said.

4       Q     And you say you never told him that?

5       A     That's correct. I said he heard me wrong.  
6           That's not what I said.

7       Q     All right. Now, after that these two Lawson  
8           deals that we've referred to throughout the  
9           course of this trial occurred; would that be  
10          correct?

11      A     Yeah, there's two Lawson deals we've been  
12          referring to.

13      Q     It was after those two Lawson deals that you  
14          became hundred percent owner of the company;  
15          isn't that right?

16      A     Yes, sir.

17      Q     And didn't you tell -- strike that. Did you  
18          hear Mr. Ward testify yesterday that you told  
19          him that you became a hundred percent owner of  
20          the company after you found out Mr. Williams  
21          had continued to take money from the company?  
22          Did you hear him testify to that yesterday?

23      A     He testified to something I would have to hear  
24          or read his testimony to see exactly what he  
25          said.

1 Q That's what you told him, wasn't it?

2 A No, sir, that's not what I told him. I've  
3 already repeated myself and told you that.

4 Q So when he testified to that yesterday, this  
5 man who didn't have a dog in this fight, this  
6 ABI sworn investigator, when he testified that  
7 you told him that, he wasn't telling the truth;  
8 is that what you're telling us?

9 A I said he heard me wrong, sir.

10 Q He heard you wrong?

11 A Yes. That's not what I meant.

12 Q No, wait, this man is an investigator for the  
13 Alabama Bureau of Investigation. You  
14 understand that, don't you?

15 A Yes, sir.

16 Q You would assume he's got some pretty  
17 substantial training about listening to people?

18 A Yes, sir.

19 Q And he came down to interview you about thefts  
20 from the bank, didn't he?

21 A He came down to talk to me about the paperwork  
22 that the Level Plains Police Department gave  
23 me.

24 Q And that included these monies from the bank  
25 didn't it, these loans supposedly with the

1 bank?

2 A It was about those loans, but we didn't know  
3 what it was at that time.

4 Q He's talking about \$90,000, wasn't he?

5 A I don't know. He was -- I don't know what all  
6 he was talking about.

7 Q That's not a small --

8 A He was talking about a lot of things.

9 Q That's not a small sum of money, is it?

10 A No, sir, \$90,000 is not.

11 Q And you're telling us that this trained  
12 investigator, who's trained to ask questions  
13 and listen to people, who was investigating  
14 this theft of \$90,000, didn't hear you right?  
15 Is that what you're telling us?

16 A He didn't hear me right or I didn't explain it  
17 right. I don't know the way that it was taken.

18 Q So what you're saying is you could have told  
19 him that --

20 A No, sir.

21 Q You never told him that?

22 A I never did tell him that Jon was stealing  
23 money from me.

24 Q Jon was taking money from you. You told him  
25 that, didn't you?

1 A (No response.)

2 Q Let me ask you this.

3 A Yes, but what amounts?

4 Q Did you --

5 A I mean, what kind of money are you talking  
6 about?

7 Q Did you tell Mr. Ward that after repeated  
8 embezzlements by Mr. Williams you finally took  
9 a hundred percent control of the business? Did  
10 you tell him that?

11 A Did I tell him that was the reason why I did  
12 it?

13 Q No, sir. Did you tell him that after repeated  
14 embezzlements you took a hundred percent  
15 control of the business?

16 A No, sir.

17 Q You never told him that?

18 A No, sir.

19 Q So if he testified to that yesterday, he wasn't  
20 telling the truth?

21 A He heard me wrong.

22 Q He heard you wrong. Well, what's the  
23 difference between hearing you wrong and not  
24 telling the truth, please?

25 A I don't know. I'm not educated enough to

1 explain such things, sir.

2 Q Heard you wrong. I've never heard that term  
3 before. Is that a Comber Borland term?

4 A I guess it's a southern term.

5 Q Well, you know, I'm just as southern as you  
6 are, brother. I grew up in Phenix City,  
7 Alabama.

8 A Well, I've heard it all the time.

9 Q Heard somebody wrong?

10 A Yeah.

11 Q Okay. Whenever it was -- well, let me ask you  
12 this. You allowed Mr. Williams to stay with  
13 this company after you found out he had been  
14 taking money from the company, didn't you?

15 A Taking money?

16 Q Yes, sir, taking money.

17 A He never did take money from the company.

18 Q Well, wait, now.

19 A He took --

20 Q You got this man --

21 A -- gasoline and stuff like that.

22 Q He took gasoline and stuff like that that you  
23 didn't authorize him to take, right?

24 A Depends on what time. I mean, you know, he  
25 would tell me that he forgot -- we had a check

1 card that we put -- filled up the company car  
2 or something like that or his personal car, if  
3 he had to go do something for the company. And  
4 if he forgot to give me a receipt or something  
5 like that, I would ask him about that and I  
6 forgot about it.

7 Q Well, wait, now.

8 A Or going out to eat or something like that.

9 Q Did he ever borrow any money from you?

10 A Did Jon Williams ever borrow money from me?

11 Q Yes, sir.

12 A Yes.

13 Q He borrowed money. Borrowed \$15,000 from you,  
14 didn't he?

15 A Yes, he did.

16 Q You entered into a note with him for that,  
17 didn't you?

18 A Yes. He bought a personal truck for his own  
19 personal self.

20 Q He bought a personal truck for his own personal  
21 self?

22 A Yes, sir. He borrowed the money from me.

23 Q Borrowed the money from you?

24 A Not Sunshine Camping Center.

25 Q Tell me what kind of truck it was?

1 A It was a green and white Ford F150, about a '97  
2 or '98 was the year.  
3 Q Who had the title of that truck?  
4 A I don't know who had the title to it.  
5 Q You didn't have the title to it, did you?  
6 A No.  
7 Q You've been in the car sales business or the RV  
8 sales business for quite some time, hadn't you?  
9 A Quite some time?  
10 Q Yes, sir.  
11 A Five or six years.  
12 Q You know about selling things that had titles  
13 to them, don't you?  
14 A Yes.  
15 Q You know on that title there's a place where  
16 you can check security interest or lien, you  
17 know that, don't you?  
18 A Yes.  
19 Q You know, also, on that title there's a place  
20 where you could have the title in your name,  
21 couldn't you?  
22 A Could have if I wanted to.  
23 Q And you know a truck can be pledged as  
24 collateral for a loan, can't you?  
25 A (No response.)

1 Q Can't you?

2 A I don't know, I guess so.

3 Q You don't know that?

4 A Yes.

5 Q Let me ask you to look at Exhibit 13 you've got  
6 in front of you up there. And I want to tell  
7 you what page in just a minute. Look at page  
8 22 if you would, please, sir.

9 A Okay.

10 Q That's the note that you entered into with Mr.  
11 Williams back on August 29, 2002, isn't it?

12 A That is correct.

13 Q You had lawyer Pittman draw that up for you,  
14 didn't you?

15 A Yes, sir.

16 Q Doesn't say anything one where about a truck,  
17 does it?

18 A Doesn't say anything about anything.

19 Q Says \$15,000, doesn't it?

20 A Yes, sir.

21 Q Now, you know about pledging stuff as  
22 collateral, don't you? You know about what I  
23 mean by collateral?

24 A Yes, sir.

25 Q Somebody says in this instance, look, if I



1 don't pay you for this loan that I'm using to  
2 buy my personal truck, you get my truck. You  
3 know about how that works?

4 A I don't want his truck. Didn't need his truck.

5 Q I didn't ask you that. You know how that  
6 works, don't you?

7 A Yes.

8 Q Let's read here paragraph one. The collateral  
9 covered by this security agreement -- that  
10 meant this loan, didn't it, this document?

11 A I assume that's what --

12 Q Is of the description found above and all  
13 products, natural increase, improvements,  
14 accessions, and additions thereto and  
15 replacements and proceeds thereof. That's what  
16 it says, right?

17 A That's what it says.

18 Q And it's talking about five shares of stock  
19 that you transferred, isn't it?

20 A Yes.

21 Q And it goes on to talk about 245 shares of  
22 stock, doesn't it.

23 A Yes.

24 Q That was the collateral, wasn't it?

25 A Yes.

1 Q Wasn't no truck, was it?

2 A I didn't say it was a truck.

3 Q Have you ever told anybody before that this  
4 loan was for a truck?

5 A I think so. I'm --

6 Q Okay. Do you remember when I took your  
7 deposition up in my office in Montgomery back  
8 about a year ago now?

9 A Yes, sir.

10 Q May 10th?

11 A Yes, sir.

12 Q You remember that?

13 A Yes.

14 Q Have you seen that deposition lately?

15 A This what you call lately, yes.

16 Q All right. Remember we had a court reporter  
17 there like Ms. German?

18 A Right.

19 Q You rose your hand and swore to tell the truth  
20 just like you've sworn to tell us here today  
21 the truth?

22 A That's right.

23 Q Okay. I'm gonna give you that deposition and  
24 I'm gonna ask you a little bit. Now, we didn't  
25 have -- I didn't have with me that day this

1 note, did I?

2 A I don't think so.

3 Q I wasn't able -- didn't have that from  
4 Mr. Pittman, did I?

5 A I don't think so.

6 Q Didn't you tell me then that the reason that  
7 the five shares of stock were given to you were  
8 so that you could be the majority stockholder  
9 in the company?

10 A Yes, and it was a reason behind it.

11 Q Did you tell me also that the reason that that  
12 was done is because your father-in-law would  
13 not loan you anymore money --

14 A That is a true fact.

15 Q -- to invest in the company?

16 A That is a true statement.

17 Q And didn't you tell me that there was no other  
18 reason other than those two?

19 A I'm -- I'll have to see it.

20 Q Well, we'll go back and look at it if you'd  
21 like to.

22 A Okay.

23 Q But didn't you tell me that there was no other  
24 reason.

25 A I don't remember that.

1 Q Okay. Sir, let's look on page 28 of your  
2 deposition. You need any help finding it?  
3 I'll tell you what, let's start -- let's start  
4 on April -- on page 26.

5 MR. SHIRLEY: I object, Your Honor.  
6 If he's using the deposition to impeach  
7 him he's supposed to ask him what he said  
8 and to answer it and then read it and ask  
9 him if he said that, not just to read his  
10 testimony while he's examining.

11 MR. SMITH: I'm sure, as Mr. Shirley  
12 well knows, under the rules the deposition  
13 of a party or a representative of a party,  
14 corporate representative, can be used for  
15 any purpose, Your Honor.

16 MR. SHIRLEY: But that isn't what  
17 he's doing. He's trying to cast an  
18 impugned doubt on his testimony by  
19 changing this technique right here. He's  
20 not offering the deposition testimony  
21 under the rule that he's saying to you.

22 THE COURT: I overrule your  
23 objection.

24 BY MR. SMITH:

25 Q Page 26, line 14. Have you found it, Mr.

1 Borland?

2 A Yes, sir.

3 Q All right. Question: If I've understood your  
4 testimony, and certainly correct me if I'm  
5 wrong, in April of '03 the company needed some  
6 more cash to buy travel trailers; is that  
7 correct?

8 A That's what it says, that's correct.

9 Q And Mr. Williams did not have the ability to do  
10 that?

11 A Correct.

12 Q But you either had the ability and/or had the  
13 willingness to do that?

14 A Sometime, correct.

15 Q But you either -- but in order to do that you  
16 wanted to become the sole shareholder of the  
17 corporation?

18 A Yes, on 4/2/03.

19 Q 4/2/03. That's ahead of what we're talking  
20 about now, isn't it?

21 A Yes.

22 Q We'll get to it. And so to get you to pay him  
23 more money you were going to acquire all of Mr.  
24 Williams's shares?

25 A Correct.

1 Q Now, turn to page 28, line 6. Now, you also  
2 told me on April 2, 2003, Mr. Williams resigned  
3 as an officer?

4 A Yes.

5 Q Why did he resign as an officer?

6 A That was one of the agreements of the money  
7 being given to the company.

8 Q Question: Any other reason other than the fact  
9 that money was given to the company by your  
10 father-in-law and eventually you wherein he was  
11 asked to resign?

12 A No, sir.

13 Q You didn't tell me anything about a truck  
14 there, did you?

15 MR. SHIRLEY: Object. That's  
16 argumentative. He didn't ask him. He  
17 didn't ask in the deposition, he hadn't  
18 asked him this morning.

19 THE COURT: I overrule the objection.

20 BY MR. SMITH:

21 Q I'll read the question again for you. Any  
22 other reason other than the fact that money was  
23 given to the company by your father-in-law and  
24 eventually wherein he was asked to resign. And  
25 your answer?

1 A No, sir. But this --

2 Q Okay.

3 A -- is the company, that is personal.

4 Q Turn back to page 25, please. We're gonna talk  
5 about August 29, 2002, now. Line 3. Now, do  
6 you know why Mr. Williams sold five shares to  
7 you on August 29, 2002? And your answer?

8 A Yes, sir.

9 Q Question: Tell us why.

10 A The company needed money to buy travel  
11 trailers, and I had all the money and he didn't  
12 have any.

13 Q You didn't tell us back in this deposition last  
14 year anything about this \$15,000 note that  
15 talks about five shares being pledged as  
16 collateral for some truck, did you,  
17 Mr. Williams?

18 MR. SHIRLEY: I object to that. He's  
19 asking if he disclosed anything in a  
20 question in the deposition. That's an  
21 improper technique of impeachment. He's  
22 asked him about it today. He's not shown  
23 him any question where he was asked that  
24 in his deposition.

25 THE COURT: Overruled.

1 BY MR. SMITH:

2 Q You didn't tell us, did you, nothing about a  
3 truck back a year ago?

4 A I wasn't asked.

5 Q I'm gonna read my question one more time, and  
6 I'm gonna let you tell these members of the  
7 jury again.

8 A You're asking me something that was personal.  
9 On that truck was personal. That personal  
10 money came from me not the company to give to  
11 Jon Williams. This is talking about the  
12 company. Am I correct on that, sir?

13 Q Sir, sir. You just got through telling us not  
14 within the last 10, 15 minutes that the 5  
15 shares -- you see it right here where it's  
16 written in this security agreement?

17 A Yes, sir.

18 Q You see that 5 shares of stock that belongs to  
19 Jon K. Williams? You see that?

20 A Yes, sir.

21 Q And you said you told us that he was doing that  
22 because of this supposed green truck. You told  
23 us that not 15 minutes ago.

24 A No. I said that's the reason why I loaned him  
25 the \$15,000, sir.



1 Q Question -- this is page 25, line 3, again.  
2 Question: Do you know why Mr. Williams sold 5  
3 shares to you on August 29, 2002. And what was  
4 your answer? Once again, what was your answer?  
5 Line 5 is your answer.  
6 A Yes, sir.  
7 Q And my question, tell us why. And your answer  
8 back a year ago was what?  
9 A You want me to keep on repeating myself?  
10 Q Yes, sir, I do. I do. Because I want to find  
11 out what the truth is. You told us something  
12 back a year ago and you didn't say nothing  
13 about a green truck. And now you come into  
14 this courthouse today and say, Oh, this  
15 security agreement really didn't have anything  
16 to do with the company; it was the green truck.  
17 A You didn't ask me what the \$15,000 was used for  
18 a year ago. You're asking me what it is used  
19 for now, sir. And I told you it was used for a  
20 truck.  
21 Q Are you gonna answer my question?  
22 A I can't answer your question, sir.  
23 Q Is it you can't or you won't?  
24 A I tried.  
25 Q Okay. Okay.

1 A It is my belief that was what I --

2 Q And, in fact, sir, Mr. Williams didn't pay you  
3 this personal note, did he, for this supposed  
4 truck?

5 A Excuse me?

6 Q He didn't pay you for that truck, did he?

7 A The 15,000?

8 Q That's right.

9 A Yes, he paid me for it.

10 Q Oh, he did?

11 A Yes.

12 Q Well, actually as of April 2, 2003, he hadn't  
13 paid for it, had he?

14 A I don't have the dates when he paid me for it  
15 but he paid me for it.

16 Q Well, let's look at this second note. This is  
17 page 24.

18 A No, sir, he didn't at that time pay me.

19 Q Uh-huh. Because now -- he's given you now in  
20 this one the 245 shares of stock; isn't that  
21 right?

22 A That is true.

23 Q Transferred it to you, didn't he?

24 A That's what the document states, yes.

25 Q Because he hadn't paid this \$15,000 back; isn't

1           that right?

2       A     That is true.

3       Q     Okay, sir. And when you did that second  
4           note -- put it back up here. When you did this  
5           one, doesn't say anything about a truck, does  
6           it?

7       A     No, sir. He was a friend of mine. I didn't  
8           think we had to list everything.

9       Q     He was a friend of yours? He had been taking  
10          money from you.

11      A     No, he was not taking money. Taking 5 and 10  
12          dollars. Who doesn't do that? I do it. I did  
13          it without him knowing it when he was  
14          president.

15      Q     And so when he got up here on the stand  
16          yesterday and said he took money from the  
17          company, he just wasn't telling the truth?

18      A     I'd like to know how much money he took so he  
19          could pay me back.

20      Q     Well, he told you -- he paid you this 15,000 --

21      A     No, I didn't know he took it.

22      Q     He paid you this \$15,000 note, didn't he?

23      A     He paid me for that \$15,000, yes, sir, but he  
24          paid me on the truck.

25      Q     He paid you that note --

1 A That's why I --

2 Q He paid you with that note from money he got  
3 from the bank, didn't he?

4 A I don't know where he got the money from, sir.  
5 I don't know where the money came from. The  
6 money was supposed to, as you said, was  
7 supposed to be going into Commercial Bank. The  
8 money we got was out of CB&T checking account.

9 Q Let me just ask you this. You were the only  
10 person, you and your -- I think was it your  
11 wife?

12 A What's the rest of the question, me and my wife  
13 what?

14 Q After August 5<sup>th</sup>, 2002, you were the only  
15 ones on the CB&T account, weren't you?

16 A No, sir.

17 Q You weren't?

18 A No, sir.

19 Q Well, you were the president of the company  
20 after April of 2003, weren't you?

21 A Yes.

22 Q You were the person got the bank statements,  
23 weren't you?

24 A They came to the business, yes.

25 Q You looked at the bank statements, didn't you?

1 A Sometimes. I had my sister taking care of it.

2 Q Had your sister taking care of it?

3 A Yes.

4 Q And she'd look at the numbers on the checks  
5 that were going out, wouldn't she? She'd  
6 review the checks?

7 A I would assume so, yes.

8 Q She'd review the deposits, didn't she?

9 A Yes.

10 Q And this isn't -- y'all's business isn't a big  
11 business. You had less than 10 employees,  
12 didn't you?

13 A Yes.

14 Q And, I mean, you knew -- everybody in the  
15 company knew when a camper was sold or an RV or  
16 whatever was sold, didn't you?

17 A If I was there. I -- my mother-in-law died and  
18 there was a lot of times I wasn't there at the  
19 company. That's why I had other people  
20 working.

21 Q You telling this Court and this jury you  
22 wouldn't review the bank statements of this  
23 company that you were president of?

24 A No, sir, I didn't say that. I said depending  
25 on when in certain, certain, you know, cases.

1 I wouldn't review them every --

2 Q Are you telling us here today that the money  
3 for the Lawson transactions -- you know what  
4 I'm talking about when I talk about the two  
5 Lawson loans?

6 A Yes, sir.

7 Q Are you telling us that that money didn't come  
8 into a Sunshine account? Are you telling us  
9 that?

10 A I can really tell you that not all of it went  
11 into it.

12 Q Well, didn't you tell me in your deposition  
13 that not one dollar of that Lawson money went  
14 into the account?

15 A That is true.

16 Q Uh-huh. And you told us -- you knew you were  
17 coming to give that deposition on May 10th,  
18 didn't you? You knew you were doing that,  
19 didn't you?

20 A Yes.

21 Q And you had gone back to look and see whether  
22 any of that Lawson money had come into the CB&T  
23 account, didn't you? You'd looked, hadn't you?

24 A I looked but not looked good enough.

25 Q Well, I'm sorry. You told us that you looked